taking of the properties was confirmed by letter dated December 25, 1941, from said Colonel Casey to plaintiff and to the other oil companies, and on or about that date Colonel Casey placed Lieutenant William C. Ramme in command of the properties. On December 31, 1941, such of said property thus taken from plaintiff as had not been theretofore transported to destinations specified by the United States Army was destroyed by said United States Army.

7. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded plaintiff from any and all control thereof; and all persons, including employees of plaintiff, were required to act, and did act, with respect to said property, upon the sole instructions of defendant, acting by and through the United States Army and its representatives with respect to said property.

8. No part of said property has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf.

9. Plaintiff filed with the United States Army Claims Service, Manila, Philippine Islands, proofs of claim in the amount of 93,329.98 pesos ($46,664.99) in respect of the ten bulk trucks, together with contents, where any, and the closed van, referred to in paragraph 5 (g) hereof; in the amount of 1,039,881.38 pesos ($519,940.69) in respect of the supplies of motor gasoline, kerosene, Diesel fuel oil, Diesolene, bunker "C" oil and lubricating oils and greases referred to in paragraph 5 (a) hereof, and in the aggregate amount of 1,531,977.96 pesos ($765,988.98) in respect of all other property referred to in paragraph 5 hereof. The amounts of such claims in respect of buildings and tanks were computed in accordance with plaintiff's understanding of the requirements of the United
21 States Army Claims Service, and did not represent the full value of such property as set forth in paragraph 5 hereof. On or about April 20, 1948, plaintiff received the sum of 54,737.00 pesos ($27,368.50) in respect of said ten bulk trucks, together with contents, where any, and the closed van, and released the Government from further liability in respect thereof. As to the other claims, the United States Army Claims Service notified plaintiff, on or about February 26, 1948, that it was unable to entertain jurisdiction of such claims. Thereafter, plaintiff sought reconsideration of such claims by said United States Army Claims Service. On or about June 23, 1948, plaintiff received the sum of 831,362.00 pesos ($415,681.00) in respect of said supplies of motor gasoline, kerosene, Diesel fuel oil, Diesolene, bunker "C" oil and lubricating oils and greases and at the same time plaintiff released the Government from further liability in respect thereof. At or about the same time plaintiff was advised by said United States Army Claims Service that, due to its scheduled termination of activities on June 30, 1948, it would

be unable properly to process plaintiff's remaining claims in respect of the property taken from plaintiff at its Pandacan installation.

10. Except as stated in paragraph 9 hereof, no action has been taken on the aforesaid claim of plaintiff, or any part thereof, by Congress or by any department of the Government.

11. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than plaintiff has been or is the owner of or interested in said claim or any part thereof.

12. By reason of the foregoing, plaintiff claims in respect of the property described in subparagraphs (b), (c), (d), (e) and (f) of paragraph 5 hereof the sum of $1,209,551.36, plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 15, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amend-
22 ment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

13. Plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets.

SECOND CLAIM

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2, 3 and 4 hereof with the same force and effect as if herein set forth in full.

15. On or about December 21, 1941, and at and prior to the requisition thereof as set forth in paragraph 16 hereof, plaintiff was the owner and entitled to the possession of the following property then located at Poro, near San Fernando, La Union, Philippine Islands, and having a value as of said date and as of the time of such requisition as set forth below:

(a) Supplies of motor gasoline, Diesel fuel oil, Diesolene, stove oil and D. F. sludge oil, having an aggregate value of not less than $118,005.34;

(b) Buildings, including office, manager's house, filling sheds, repair shed, pumphouses, garage, store house, etc., having an aggregate value of not less than $18,630.00;

(c) Steel tanks, tank foundations and/or staging, pipelines, drainage, fencing, machinery, plants, etc., hoses, equipment and tools, fire service accessories and appliances, etc., and lighting and power connections, having an aggregate value of not less than $225,847.50;

(d) General storehouse supplies, including ropes and cables, hoses, paints, hardwares, spare parts for trucks, tank gauging

equipment, drum plugs and washers, etc., having an aggregate value of not less than $1,159.50; and

23 (c) Small tools, including wrenches, hammers, spanners, wheel-barrows, chisels, picks, shovels, clamps, paint brushes, tongs, etc., having an aggregate value of not less than $217.40.

16. On or about December 21, 1941, defendant requisitioned, appropriated and took title to and possession of all the property referred to in paragraph 15 hereof. The name of the agent or representative of defendant presently known to plaintiff who requisitioned, appropriated and took title to and possession of the aforementioned property is Lieutenant Arsaga, USAFFE. The United States Army entered the premises and exercised exclusive control thereof. Demolition charges were placed in and about the property by the United States Army, and thereafter the charges were set off by the Army, destroying the property. In so far as is known, the orders of requisition were verbal.

17. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit, ultimately destroying the same, and excluded plaintiff from any and all control thereof; and all persons, including employees of plaintiff, were required to act, and did act, with respect to said property, upon the sole instructions of defendant, acting by and through the United States Army and its representatives with respect to said property.

18. No part of said property has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf.

19. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than plaintiff has been or is the owner of or interested in said claim or any part thereof.

24 20. By reason of the foregoing, plaintiff claims the sum of $363,859.74, plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 21, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

21. Plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets.

22. Shortly after the requisitioning, appropriation and taking as aforesaid of said property, the invading forces of the Imperial

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 16

THE UNITED STATES, PETITIONER

vs.

CALTEX (PHILIPPINES), INCORPORATED, THE SHELL COMPANY OF PHILIPPINE ISLANDS, LIMITED AND STANDARD-VACUUM OIL CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED FEBRUARY 28, 1953
CERTIORARI GRANTED MAY 25, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 610

THE UNITED STATES, PETITIONER,

VS.

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS, LTD., AND STANDARD-VACUUM OIL CO.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

INDEX

	Original	Print
Record from the United States Court of Claims	1	1
Petition of Caltex (Philippines), Inc., in No. 48324	1	1
Exhibit "B"—Schedule enumerating and describing facilities and value of products	11	6
Exhibit "C"—Letter dated December 25, 1941 from United States Army Forces in the Far East to Asiatic Petroleum Co.	12	7
General traverse in No. 48324	13	7
Amended petition of The Shell Company of Philippine Islands, Limited in No. 48265	17	8
General traverse in No. 48265	41	23
History of proceedings in Standard-Vacuum Oil Co., No. 48319	43	23
Third amended petition of Standard-Vacuum Oil Co., No. 48319	47	24
General traverse in No. 48319	57	29
Special findings of fact	111	30
Conclusion of law	128	44
Opinion, Howell, J.	129	44
Dissenting opinion, Jones, C. J. and Whitaker, J.	145	58
Judgment	151	61
Clerk's certificate (omitted in printing)	153	
Order extending time to file certiorari	156	62
Stipulation as to record	157	62
Order allowing certiorari		65

1 IN THE COURT OF CLAIMS

48324

Action Number 5.

CALTEX (PHILIPPINES), INC., Claimant,

against

UNITED STATES OF AMERICA, Defendant.

PETITION.—Filed December 5, 1947

To the Honorable Chief Justice and the Judges of the Court of Claims:

The claimant Caltex (Philippines), Inc., by Leo T. Kissam, its attorney, respectfully represents:

1. That the claimant, Caltex (Philippines), Inc., (formerly The Texas Company (Philippines), Inc.) is now, and, during all the times hereinafter mentioned, was a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of the Philippines, and has its principal place of business at 91 Plaza Moraga, City of Manila, Island of Luzon, Philippines.

2. That on and for many years prior to the 15th day of December, 1941, the claimant was and it still is the sole and absolute owner in fee of a certain tract or parcel of real property, in the City of Manila, Island of Luzon, Philippines; that the said tract consists of two adjoining lots situated at Pandacan in the City of
2 Manila, Island of Luzon, Philippines; said tract is generally bounded on the north by the Pasig River, on the east by property of the Standard Oil Company, on the west by property of the Associated Oil Company and on the south by a public road; one of said lots or parcels of land, consisting of Lot Number One, covers an area of 31,898.8 square meters and the other said lot or parcel of land, consisting of Lot Number Two, has an area of approximately 2,826.8 square meters and has a frontage on the Pasig River of about 688 feet; said tract is hereinafter referred to as "Pandacan Terminal"; a copy of a map or survey of said tract is annexed hereto, made a part hereof and marked Exhibit "A"; a copy of a survey of said tract showing certain installations and improvements thereon constructed and erected on the 15th day of

December, 1941, is annexed hereto, made a part hereof and marked Exhibit "A-1".

3. That prior to the 15th day of December, 1941, at its own cost and expense, the claimant had acquired, constructed and installed at the said Pandacan Terminal elaborate facilities which included wharfs, storage and service tanks, buildings and other improvements, vehicles, lighters, tools, equipment and other facilities for the sole and exclusive use by the claimant of Pandacan Terminal as a storage plant for petroleum and allied products, as a distribution point for petroleum and allied products and as a marine terminal; that on or about the said 15th day of December, 1941, claimant had located and stored at said Pandacan Terminal large quantities of petroleum and allied products; that there is annexed hereto, made a part hereof and marked Exhibit "B" a schedule enumerating and describing the said facilities and the said petroleum and allied products and the fair and reasonable value thereof on the 15th day of
3 December, 1941.

4. That on the said 15th day of December, 1941, claimant was the sole and absolute owner of all of the aforesaid facilities and was the sole and absolute owner of all of the aforesaid petroleum and allied products.

5. That the claimant is now and at all of the times herein mentioned, was engaged in the business of storing, distributing, purchasing, selling and otherwise dealing in petroleum and allied products and for many years prior to the 15th day of December, 1941, used and operated the said Pandacan Terminal and the facilities thereon in its said business in the Philippine Islands.

6. That on or about the 7th day of December, 1941, the United States of America was attacked by the armed forces of the former Empire of Japan and the Philippine Islands were attacked and invaded.

7. That on or about the 8th day of December, 1941, a state of war was duly declared by the United States of America against the former Empire of Japan and active hostilities continued thereafter until the surrender of the former Empire of Japan on or about the 15th day of August, 1945.

8. That on or about the 15th day of December, 1941, the United States of America, acting by and through its proper officers and agents of the United States Armed Forces of the Far East, requisitioned, seized and took for its own and exclusive use in the prosecution of the war, in pursuance of its war powers and by war-
4 rant of proper authority, the said Pandacan Terminal, including all of its said facilities and all of the said petroleum and allied products located and stored thereat, all of which were then exclusively the property of the claimant; that thereafter and

on or about the 25th day of December, 1941, the aforesaid requisition and taking was confirmed by a written order of requisition issued by the United States Armed Forces of the Far East to claimant; there is annexed hereto, made a part hereof and marked Exhibit "C" a copy of said order of requisition.

9. That in accordance with said taking and on or about the 15th day of December, 1941, the United States of America, by its proper officers and agents of the United States Armed Forces of the Far East, entered in and upon the said Pandacan Terminal and seized and took complete control and custody of said Pandacan Terminal, all of its said facilities and all of the said petroleum products then stored and located at said Pandacan Terminal.

10. That thereafter the said Pandacan Terminal, its said facilities and the petroleum and allied products stored and located thereat, were under the exclusive custody, control and use of the United States; that subsequent to the 15th day of August, 1945, the claimant with the authority and permission of the United States Armed Forces of the Far East, reentered the said Pandacan Terminal, but all of the aforesaid facilities theretofore taken, as aforesaid, and all of the petroleum and allied products, theretofore taken as aforesaid, were so completely used, lost, destroyed or damaged as to be entirely worthless; that none of the said facilities, taken as aforesaid, and none of the said petroleum and allied products, taken as aforesaid, have been replaced or returned to claimant.

11. That the United States acting under and pursuant to its war powers and by its proper officers and agents did take, retain and use the said Pandacan Terminal, together with all of its said facilities and said petroleum and allied products for purposes of its own from and after the 15th day of December, 1941, without making any compensation to the claimant therefor.

That the claimant did not voluntarily relinquish its rights to the said Pandacan Terminal, its facilities and the petroleum and allied products stored thereat without just compensation therefor, but on the contrary has demanded just compensation for the taking, retention and use of said facilities and said petroleum and allied products, but the United States of America has failed and refused to make compensation for the aforesaid taking, retention and use, notwithstanding that claimant is entitled to just compensation under the provisions of the 5th Amendment to the Constitution of the United States and upon an implied contract arising out of and by reason of the said taking, retention and use.

That by reason of its acts aforesaid, the United States of America has deprived claimant of its property rights in and to the said Pandacan Terminal, its said facilities and the said petroleum and allied products, and thereby became obligated to make just com-

pensation therefor; that the fair and reasonable value of the said facilities and the said petroleum and allied products on the 15th day of December, 1941, amounted in the aggregate to $2,356,591.42 and that by virtue of the said taking, retention and use, claimant has been damaged to the extent of $2,356,591.42 with interest thereon from the date of said taking at the rate of six per centum (6%) per annum until paid, which amount claimant hereby reclaims and demands.

12. That the said acts of the United States of America as aforesaid were done lawfully by proper officers and agents of the United States under the authority of the United States in the exercise of its war powers under the Constitution of the United States and the Acts of Congress thereunto pertaining particularly under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), and under the extreme and imperious conditions of war.

13. That on or about the 27th day of June, 1946, claimant duly filed with Claim Service, United States Armed Forces, Western Pacific, City of Manila, Philippine Islands, its claim for the said taking, retention and use; shortly before the commencement of this action claimant was informed by Claims Service, United States Armed Forces, Western Pacific, that said claim had been rejected; that the said claim filed as aforesaid was in due form and in accordance with regulations thereunto pertaining; that the nature and extent of the action taken upon said claim except as herein set forth is unknown to the claimant.

14. That no action upon said claim other than as hereinabove set forth has been had by Congress or by any of the departments of the Government of the United States.

15. That claimant has made no transfer or assignment of the aforesaid claim or any part thereof, or of any interest therein and the claimant is now and always has been the sole and absolute owner of the said claim.

16. That claimant is justly entitled to the said sum of $2,356,591.42, with interest thereon, claimed from the United States of America after allowing all just credits and setoffs.

17. That the claimant has at all times through its officers and agents borne true allegiance to the United States of America and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said government.

18. That the claimant believes the facts as hereinabove set forth to be true.

WHEREFORE, claimant prays for judgment against the United States of America in the sum of $2,356,591.42 and interest thereon

from the 15th day of December, 1941, to the date of payment and for such other and further relief to which it may appear claimant is justly entitled.

CALTEX (PHILIPPINES), INC.,

By J. V. MURRAY,
President.

LEO T. KISSAM,
Attorney for Claimant,
Office & P. O. Address,
20 Pine Street,
New York 5, New York.

8-10 *Duly sworn to by J. V. Murray. Jurat omitted in printing.*

11 EXHIBIT B. TO PETITION

Pandacan Terminal.

Description	Fair and Reasonable Value (in Philippine pesos)
Automotive Equipment	71,279.22
Building on Fee Land	394,532.00
Bulkheads, Docks and Wharves	14,238.19
Compressors and Blowers	1,138.35
Fences	19,460.00
Grease Guns	1,113.19
Household Furniture and Fixtures	4,800.00
Improvements on Fee Land	28,737.00
Can Factory Machinery, Tools, and Equipment	220,232.00
Protective Equipment	5,565.04
Office Equipment	2,900.00
Office Furniture and Fixtures	5,850.00
Pipe Work-Lines	56,555.00
Pumps	20,114.17
Pump Outfits	247.50
Tanks, Steel or Iron	383,791.69
Telephone Systems—Local	110.00
Yard Light and Power Lines	28,000.00
Steel Drums	9,345.00
Marine Equipment	61,250.00
Tank Cars	12,933.00
Ethyl Gasoline Blending Plant and Equipment	42,438.78
Tank Trucks (IHC)	9,234.52
Tank Truck (White)	11,126.40
Can Factory Stocks	154,628.47
Tools and Supplies	87,000.00
Service Equipment	11,288.75
Merchandise Stocks—Petroleum and Allied Products	3,052,209.71
Miscellaneous Items	3,064.85
TOTAL CLAIMS (Philippine Pesos)	4,713,182.83 Pesos
TOTAL CLAIMS (American Dollars Calculated at rate 2.00 pesos = $1.00.)	$2,356,591.42

12 EXHIBIT C. TO PETITION

HEADQUARTERS
UNITED STATES ARMY FORCES IN THE FAR EAST
Office of the Commanding General
Manila, P. I.

In reply refer to:

December 25, 1941.

Asiatic Petroleum Co., Manila, P. I.
Tidewater Associated, Manila, P. I.
Caltex Corp., Manila, P. I.
Standard Vacuum Oil Co., Manila, P. I.

Dear Sirs:

Effective immediately all petroleum stocks, storage and handling facilities, etc., at your Manila, Pandacan oil depots are requisitioned by the U. S. Army. Any action deemed necessary for the destruction of this property will be handled by the U. S. Army. However, your personnel must remain on duty under the direction of the U. S. Army and obey any instructions given them by the U. S. Army.

Your full and active assistance and cooperation are requested.

By command of General MACARTHUR:

HUGH J. CASEY
HUGH J. CASEY
Colonel, C. E.
Engineers.

13-16 GENERAL TRAVERSE IN CASE NO. 48324.—Filed January 14, 1948.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

(S.) HERBERT A. BERGSON,
Acting Assistant Attorney General.

K.M.B.
D.B.M.
E.T.F.

17 In the Court of Claims of the United States

No. 48265

THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED, PLAINTIFF

against

THE UNITED STATES OF AMERICA, DEFENDANT

AMENDED PETITION—Filed February 11, 1949

To the Honorable the Court of Claims of the United States:

Plaintiff, by its attorneys, Cravath, Swaine & Moore, alleges upon information and belief:

FIRST CLAIM

1. Plaintiff, The Shell Company of Philippine Islands Limited, formerly called The Asiatic Petroleum Company (Philippine Islands) Limited, is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland.

2. The Government of the United Kingdom of Great Britain and Northern Ireland accords to citizens of the United States of America the right to prosecute claims against such Government in its
18 courts.

3. Plaintiff has not in any way voluntarily aided, abetted or given encouragement to rebellion against the Government of the United States of America.

4. Plaintiff believes the facts as stated in this amended petition to be true.

5. On or about December 15, 1941, and at and prior to the requisition thereof as set forth in paragraph 6 hereof, plaintiff was the owner and entitled to the possession of the following property then located at Pandacan, Manila, Philippine Islands, and having a value as of said date and as of the time of such requisition as set forth below:

(a) Supplies of motor gasoline, kerosene, Diesel fuel oil, Diesolene, bunker "C" oil and lubricating oils and greases, having an aggregate value of not less than $519,940.69;

(b) Buildings, including offices, residences, bodegas, pumphouses, filling sheds, tin-making factory and tin plate store, general store, paint, drum and soldering sheds, garage, etc., having an aggregate value of not less than $260,535.00;

(c) Steel tanks, tank foundations and/or staging, bunding or embankments, drainage, fencing and gates, pipelines, petrolic hoses, jetties, dolphins, mooring rings, bridge, machinery, plants, pumps, etc., equipment and tools, fire service accessories and appliances, etc., and lighting and power connections, having an aggregate value of not less than $715,328.00;

(d) General storehouse supplies, including hoses, gasoline pumps, air compressors, electric motors, paints, hardwares, etc., electrical supplies, etc., hoists, cables, etc., spare parts for trucks and cars, reinforcing steel, underground tanks, miscellaneous service station equipment, etc., having an aggregate value of not less than $186,399.40;

19 (e) Small tools, including wrenches, hammers, crow bars, spanners, shoveis, wheel-barrows, pipes, etc., having an aggregate value of not less than $1,048.35;

(f) Trucks, carts, automobiles, lorries, railway tank wagons and other rolling stock and property, having an aggregate value of not less than $46,240.61; and

(g) Ten bulk trucks, together with contents, where any, and one Chevrolet closed van, having an aggregate value of not less than $46,664.99.

6. On or about December 15, 1941, defendant requisitioned, appropriated and took title to and possession of all the property referred to in paragraph 5 hereof and then owned by plaintiff as therein stated. The requisition, appropriation and taking of title to and possession of the said property were the subjects of discussion at one or more meetings held in Manila prior to December 15, 1941, called at the instance of the commanding personnel of the United States Armed Forces of the Far East (USAFFE) and attended by representatives of plaintiff and other oil companies maintaining installations at Pandacan. The persons presently known to plaintiff who attended the meetings on behalf of defendant included Colonel (now Brigadier General) Charles C. Drake, Colonel Frank Brezina, Colonel Joseph E. Kramer, Colonel A. E. McConnell and Major Theodore Kalakuka. At those meetings it was arranged and agreed that the properties of the oil companies at Pandacan, including the said property of plaintiff, would be taken over by the United States Army and that the personnel of the oil companies would continue to operate the properties on behalf of the United States Army. On or about December 15, 1941, the properties were taken by the Army and thereafter operated exclusively for its benefit and upon its instructions. The control by the United States Army over the properties was exercised through officers attached to its Quartermaster Corps until on or about December 25, 1941, at which time

20 Colonel (now Major-General) Hugh J. Casey of the United States Army, Corps of Engineers, was placed in charge. The

Japanese Army gained complete control of the Philippine Islands. During the ensuing period of Japanese occupation, all local records and documents of plaintiff relating to the property of plaintiff so requisitioned, appropriated and taken as aforesaid by the United States Army were accordingly rendered inaccessible to plaintiff and ultimately were in large part either lost or destroyed, and representatives of plaintiff having personal knowledge of the extent of the property so requisitioned, appropriated and taken were either detained in concentration camps or otherwise prevented from imparting to plaintiff the information necessary in its efforts to perfect its claim against the United States in respect of the property so requisitioned, appropriated and taken as aforesaid by the United States Army. Following the unconditional surrender of Japan in September of 1945, there followed an additional period of military occupation and civil turmoil during which plaintiff was retarded further in its efforts properly to compile and present its claim against the United States for property requisitioned, appropriated and taken as aforesaid, although every reasonable effort was made to reconstruct the information vital to the proper compilation of its claim against the United States, and although due diligence was exercised in the presentation thereof.

25 THIRD CLAIM

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2, 3 and 4 hereof with the same force and effect as if herein set forth in full.

24. On or about December 15, 1941, and at and prior to the requisition thereof as set forth in paragraph 25 hereof, plaintiff was the owner and in possession of the following property then located at Dagupan, Pangasinan, Philippine Islands, and having a value as of said date and as of the time of such requisition as set forth below:

(a) Supplies of motor gasoline, kerosene, Diesel fuel oil, Diesolene, lubricating oil and greases, having an aggregate value of not less than $12,444.00;

(b) Buildings, including office, watchman's quarters, garage, godown, lean-to, etc., having an aggregate value of not less than $18,035.00;

(c) Steel tanks, tank foundations and/or staging, fencing and gates, pipelines and fittings, hoses, machinery, plants, etc., equipment and tools, and fire service accessories and appliances, etc., having an aggregate value of not less than $11,425.00;

(d) General storehouse supplies, including service station equipment, paints, pipes and fittings, electrical supplies, spare parts for trucks, etc., having an aggregate value of not less than $447.10; and

(e) Small tools, including wrenches, spanners, pliers, tongs, solder bolts, hydrometers, thermometers, railcar mover, etc., having an aggregate value of not less than $43.90.

25. On or about December 15, 1941, defendant requisitioned, appropriated and took title to and possession of all the property referred to in paragraph 24 hereof. The requisition, appropria-
26 tion and taking of title to and possession of the said property were the subjects of discussion at one or more meetings held in Manila prior to December 15, 1941, called at the instance of the commanding personnel of the United States Armed Forces of the Far East (USAFFE) and attended by representatives of plaintiff and other oil companies maintaining installations throughout the Philippine Islands. The persons presently known to plaintiff who attended the meetings on behalf of defendant included Colonel (now Brigadier General) Charles C. Drake, Colonel Frank Brezina, Colonel Joseph E. Kramer, Colonel A. E. McConnell and Major Theodore Kalakuka. At those meetings it was arranged and agreed that plaintiff's property located at Dagupan would be taken over by the United States Army and that plaintiff's personnel would continue to operate the property on behalf of the United States Army. On or about December 15, 1941, the United States Army entered the premises and exercised exclusive control thereof, and thereafter the property was operated exclusively for the benefit of the United States Army and upon its instructions. The names of the agents or representatives of defendant presently known to plaintiff who entered the premises and exercised control over the aforementioned property are Colonel Moran and Captain Valdez, USAFFE. On or about December 23, 1941, demolition charges were placed in and about said property. In so far as is known, the orders of requisition were verbal.

26. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit and excluded plaintiff from any and all control thereof; and all persons, including employees of plaintiff, were required to act, and did act, with respect to said property, upon the sole instructions of defendant, acting by and through the United States Army and its representatives with respect to said property.

27. No part of said property has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf.

27 28. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than plaintiff has been or is the owner of or interested in said claim or any part thereof.

29. By reason of the foregoing, plaintiff claims the sum of $42,395.00, plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 15, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

30. Plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets.

31. Shortly after the requisitioning, appropriation and taking as aforesaid of said property, the invading forces of the Imperial Japanese Army gained complete control of the Philippine Islands. During the ensuing period of Japanese occupation, all local records and documents of plaintiff relating to the property of plaintiff so requisitioned, appropriated and taken as aforesaid by the United States Army were accordingly rendered inaccessible to plaintiff and ultimately were in large part either lost or destroyed, and representatives of plaintiff having personal knowledge of the extent of the property so requisitioned, appropriated and taken were either detained in concentration camps or otherwise prevented from imparting to plaintiff the information necessary in its efforts to perfect its claim against the United States in respect of the property so requisitioned, appropriated and taken as aforesaid by the United States Army. Following the unconditional surrender of Japan in September of 1945, there followed an additional period of military occupation and civil turmoil during which plaintiff was retarded further in its efforts properly to compile and present its claim against
28 the United States for property requisitioned, appropriated and taken as aforesaid, although every reasonable effort was made to reconstruct the information vital to the proper compilation of its claim against the United States, and although due diligence was exercised in the presentation thereof.

Fourth Claim

32. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2, 3 and 4 hereof with the same force and effect as if herein set forth in full.

33. On or about December 22, 1941, and at and prior to the requisition thereof as set forth in paragraph 34 hereof, plaintiff was the owner and entitled to the possession of the following property then located at Cabanatuan, Nueva Ecija, Philippine Islands, and having a value as of said date and as of the time of such requisition as set forth below:

(a) Supplies of motor gasoline and Diesel fuel oil, having an aggregate value of not less than $2,252.49;

(b) Buildings, including filling shed, garage, solder bolt heating shed, bodeguero's quarters, etc., having an aggregate value of not less than $2,650.00;

(c) Steel tanks, tank foundations and/or staging, fencing and gates, pipelines and fittings, hoses, equipment and tools, and fire service accessories and appliances, etc., having an aggregate value of not less than $11,899.00; and

(d) Small tools, including wrenches, hammers, files, shovels, spanners, pails, tongs, pliers, etc., having an aggregate value of not less than $31.10.

34. On or about December 22, 1941, defendant requisitioned, appropriated and took title to and possession of all the property referred to in paragraph 33 hereof. The requisition, appro-
29 priation and taking of title to and possession of the said property were the subjects of discussion at one or more meetings held in Manila prior to December 15, 1941, called at the instance of the commanding personnel of the United States Armed Forces of the Far East (USAFFE) and attended by representatives of plaintiff and other oil companies maintaining installations throughout the Philippine Islands. The persons presently known to plaintiff who attended the meetings on behalf of defendant included Colonel (now Brigadier General) Charles C. Drake, Colonel Frank Brezina, Colonel Joseph E. Kramer, Colonel A. E. McConnell and Major Theodore Kalakuka. At those meetings it was arranged and agreed that plaintiff's property located at Cabanatuan would be taken over by the United States Army and that plaintiff's personnel would continue to operate the property on behalf of the United States Army. On or about December 22, 1941, the United States Army entered the premises and exercised exclusive control thereof, and thereafter the property was operated exclusively for the benefit of the United States Army and upon its instructions. The name of the agent or representative of defendant presently known to plaintiff who entered the premises and exercised control over the aforementioned property is Captain Leoncio, USAFFE. On or about December 27, 1941, demolition charges were placed in and about said property, which charges were ultimately set off by the United States Army and the property was destroyed. In so far as is known, the orders of requisition were verbal.

35. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, defendant exercised complete control of said property and disposed thereof in such manner as it saw fit, ultimately destroying the same, and excluded plaintiff from any and all control thereof; and all persons, includ-

ing employees of plaintiff, were required to act and did act, with respect to said property, upon the sole instructions of de-
30 fendant, acting by and through the United States Army and its representatives with respect to said property.

36. No part of said property has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf.

37. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than plaintiff has been or is the owner of or interested in said claim or any part thereof.

38. By reason of the foregoing, plaintiff claims the sum of $16,832.59, plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 22, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

39. Plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets.

40. Shortly after the requisitioning, appropriation and taking as aforesaid of said property, the invading forces of the Imperial Japanese Army gained complete control of the Philippine Islands. During the ensuing period of Japanese occupation, all local records and documents of plaintiff relating to the property of plaintiff so requisitioned, appropriated and taken as aforesaid by the United States Army were accordingly rendered inaccessible to plaintiff and ultimately were in large part either lost or destroyed, and representatives of plaintiff having personal knowledge of the extent of the property so requisitioned, appropriated and taken were either detained in concentration camps or otherwise prevented from imparting to plaintiff the information necessary in its efforts
31 to perfect its claim against the United States in respect of the property so requisitioned, appropriated and taken as aforesaid by the United States Army. Following the unconditional surrender of Japan in September of 1945, there followed an additional period of military occupation and civil turmoil during which plaintiff was retarded further in its efforts properly to compile and present its claim against the United States for property requisitioned, appropriated and taken as aforesaid, although every reasonable effort was made to reconstruct the information vital to the proper compilation of its claim against the United States, and although due diligence was exercised in the presentation thereof.

FIFTH CLAIM

41. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2, 3 and 4 hereof with the same force and effect as if herein set forth in full.

42. On or about December 18, 1941, and at and prior to the requisition thereof as set forth in paragraph 43 hereof, plaintiff was the owner and entitled to the possession of the following property then located at San Fernando, Pampanga, Philippine Islands, and having a value as of said date and as of the time of such requisition as set forth below:

(a) Supplies of motor gasoline, Diesel fuel oil and kerosene, having an aggregate value of not less than $4,968.05;

(b) Buildings, namely, one steel frame garage, having an aggregate value of not less than $360.00;

(c) Steel tanks, tank foundations and/or staging, fencing, pipelines and fittings, hoses, equipment and tools, fire service accessories and appliances, etc., and lighting and power connections, having an aggregate value of not less than $5,670.00; and

32 (d) Small tools, including wrenches, hammers, spanners, files, paint brushes, railway car mover, funnels, pliers, tongs, soldering irons, thermometers, hydrometers, etc., having an aggregate value of not less than $51.10.

43. On or about December 18, 1941, defendant requisitioned, appropriated and took title to and possession of all the property referred to in paragraph 42 hereof. The requisition, appropriation and taking of title to and possession of the said property were the subjects of discussion at one or more meetings held in Manila prior to December 15, 1941, called at the instance of the commanding personnel of the United States Armed Forces of the Far East (USAFFE) and attended by representatives of plaintiff and other oil companies maintaining installations throughout the Philippine Islands. The persons presently known to plaintiff who attended the meetings on behalf of defendant included Colonel (now Brigadier General) Charles C. Drake, Colonel Frank Brezina, Colonel Joseph E. Kramer, Colonel A. E. McConnell and Major Theodore Kalakuka. At those meetings it was arranged and agreed that plaintiff's property located at San Fernando, Pampanga, would be taken over by the United States Army and that plaintiff's personnel would continue to operate the property on behalf of the United States Army. On or about December 18, 1941, the United States Army entered the premises and exercised exclusive control thereof, and thereafter the property was operated exclusively for the benefit of the United States Army and upon its instructions. The name of the agent or representative of defendant presently known to

plaintiff who entered the premises and exercised control over the aforementioned property is Major Robert E. Lund, USAFFE. On or about January 2, 1942, the United States Army set fire to and completely destroyed the said storage depot. In so far as is known, the orders of requisition were verbal.

44. From and after the time of the requisitioning, appropriation and taking as aforesaid of said property, defendant exercised complete control of said property, and disposed thereof in such manner as it saw fit, ultimately destroying the same, and excluded plaintiff from any and all control thereof; and all persons, including employees of plaintiff, were required to act, and did act, with respect to said property, upon the sole instructions of defendant, acting by and through the United States Army and its representatives with respect to said property.

45. No part of said property has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf.

46. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than plaintiff has been or is the owner of or interested in said claim or any part thereof.

47. By reason of the foregoing, plaintiff claims the sum of $11,049.15, plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 18, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

48. Plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets.

49. Shortly after the requisitioning, appropriation and taking as aforesaid of said property, the invading forces of the Imperial Japanese Army gained complete control of the Philippine Islands. During the ensuing period of Japanese occupation, all local records and documents of plaintiff relating to the property of plaintiff so requisitioned, appropriated and taken as aforesaid by the United States Army were accordingly rendered inaccessible to plaintiff and ultimately were in large part either lost or destroyed, and representatives of plaintiff having personal knowledge of the extent of the property so requisitioned, appropriated and taken were either detained in concentration camps or otherwise prevented from imparting to plaintiff the information necessary in its efforts to perfect its claim against the United States in respect of the property so requisitioned, appropriated and taken as aforesaid by the United States Army. Following the unconditional surrender of Japan in September of 1945, there followed an additional

period of military occupation and civil turmoil during which plaintiff was retarded further in its efforts properly to compile and present its claim against the United States for property requisitioned, appropriated and taken as aforesaid, although every reasonable effort was made to reconstruct the information vital to the proper compilation of its claim against the United States, and although due diligence was exercised in the presentation thereof.

Sixth Claim

50. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2, 3 and 4 hereof with the same force and effect as if herein set forth in full.

51. On or about December 16, 1941, and at and prior to the requisition thereof as set forth in paragraph 52 hereof, plaintiff was the owner and entitled to the possession of the following property then located at San Pablo, Laguna, Philippine Islands, and having a value as of said date and as of the time of such requisition as set forth below:

(a) Supplies of motor gasoline, having an aggregate value of not less than $6,153.09;

(b) Buildings, including a filling shed, solder bolt heating shed and garage, having an aggregate value of not less than $1,322.50;

(c) Steel tanks, tank foundations and/or staging, fencing and gates, pipelines and fittings, hoses, equipment and tools, fire service accessories and appliances, etc., and lighting and power connections, having an aggregate value of not less than $14,220.00; and

(d) Small tools, including wrenches, hammers, spanners, files, chisels, paint brushes, solder bolts, funnels, pliers, tongs, thermometers, hydrometers, etc., having an aggregate value of not less than $58.00.

52. On or about December 16, 1941, defendant requisitioned, appropriated and took title to and possession of all the property referred to in paragraph 51 hereof. The requisition, appropriation and taking of title to and possession of the said property were the subjects of discussion at one or more meetings held in Manila prior to December 15, 1941, called at the instance of the commanding personnel of the United States Armed Forces of the Far East (USAFFE) and attended by representatives of plaintiff and other oil companies maintaining installations throughout the Philippine Islands. The persons presently known to plaintiff who attended the meetings on behalf of defendant included Colonel (now Brigadier General) Charles C. Drake, Colonel Frank Brezina, Colonel Joseph E. Kramer, Colonel A. E. McConnell and Major Theodore

Kalakuka. At those meetings it was arranged and agreed that plaintiff's property located at San Pablo, Laguna, would be taken over by the United States Army and that plaintiff's personnel would continue to operate the property on behalf of the United States Army. On or about December 16, 1941, the United States Army entered the premises and exercised exclusive control thereof, and thereafter the property was operated exclusively for the benefit of the United States Army and upon its instructions. The name of the agent or representative of defendant presently known to plaintiff who entered the premises and exercised control over the aforementioned property is Major Smother, USAFFE. On or about December 26, 1941, demolition charges were placed in and
36 about said property. Insofar as is known, the orders of requisition were verbal.

53. From and after the time of the requisition, appropriation and taking as aforesaid of said property, defendant exercised complete control of said property and disposed thereof in such manner as it saw fit and excluded plaintiff from any and all control thereof; and all persons, including employees of plaintiff, were required to act, and did act, with respect to said property, upon the sole instructions of defendants, acting by and through the United States Army and its representatives with respect to said property.

54. No part of said property has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf.

55. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than plaintiff has been or is the owner of or interested in said claim or any part thereof.

56. By reason of the foregoing, plaintiff claims the sum of $21,753.59, plus an amount equivalent to interest at the rate of 6% per annum on said sum from December 16, 1941, the date of requisitioning, to the date of the entry of judgment herein, under the provisions of the Fifth Amendment to the Constitution of the United States, and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-724), as fair and just compensation for the property so requisitioned, appropriated and taken.

57. Plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets.

58. Shortly after the requisitioning, appropriation and taking as aforesaid of said property, the invading forces of the Imperial Japanese Army gained complete control of the Philippine
37 Islands. During the ensuing period of Japanese occupation, all local records and documents of plaintiff relating to the property of plaintiff so requisitioned, appropriated and taken as aforesaid by the United States Army were accordingly rendered inaccessible to plaintiff and ultimately were in large part either

lost or destroyed, and representatives of plaintiff having personal knowledge of the extent of the property so requisitioned, appropriated and taken were either detained in concentration camps or otherwise prevented from imparting to plaintiff the information necessary in its efforts to perfect its claim against the United States in respect of the property so requisitioned, appropriated and taken as aforesaid by the United States Army. Following the unconditional surrender of Japan in September of 1945, there followed an additional period of military occupation and civil turmoil during which plaintiff was retarded further in its efforts properly to compile and present its claim against the United States for property requisitioned, appropriated and taken as aforesaid, although every reasonable effort was made to reconstruct the information vital to the proper compilation of its claim against the United States, and although due diligence was exercised in the presentation thereof.

SEVENTH CLAIM

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1, 2, 3 and 4 hereof with the same force and effect as if herein set forth in full.

60. During the period from March 31, 1942, to on or about April 5, 1942, plaintiff, at the instance of representatives of the United States Navy, sold and delivered to defendant at Cebu, Philippine Islands, for use on the submarines SEADRAGON and SNAPPER, then being operated by the United States Navy, 131.44 metric tons of Diesel fuel oil, for which defendant promised and agreed to pay the sum of 7,886.40 pesos ($3,943.20) and which was of the reasonable value of that amount.

38 61. The agreement or purchase order, if any, with respect to said sale and delivery was lost or destroyed, and plaintiff does not have a copy of said agreement or purchase order.

62. No part of the purchase price of said fuel oil so sold and delivered to defendant has been paid.

63. Plaintiff has duly demanded payment of the purchase price of said fuel oil so sold and delivered to defendant and has filed a proof of claim with respect thereto with the Bureau of Supplies and Accounts, United States Navy Department, Washington, D. C.; but plaintiff has not been informed as to what action, if any, has been taken on said claim by said Bureau of Supplies and Accounts.

64. Except as stated in paragraph 63 hereof, no action has been taken on said claim, or any part thereof, by Congress or by any department of the Government.

65. There has been no assignment or transfer of said claim, or any part thereof or interest therein; and no person other than plaintiff has been or is the owner of or interested in said claim or any part thereof.

66. By reason of the foregoing, plaintiff claims the sum of $3,943.20 under the agreement referred to in paragraph 60 hereof.

67. Plaintiff is justly entitled to recover the amount claimed after allowing all just credits and offsets.

WHEREFORE, plaintiff respectfully prays judgment against defendant in the amount of $1,669,384.63, plus an amount equivalent to interest at the rate of 6% per annum on parts thereof as follows:

39 (i) on $1,209,551.36 thereof from December 15, 1941;
(ii) on $363,859.74 thereof from December 21, 1941;
(iii) on $42,395.00 thereof from December 15, 1941;
(iv) on $16,832.59 thereof from December 22, 1941;
(v) on $11,049.15 thereof from December 18, 1941; and
(vi) on $21,753.59 thereof from December 16, 1941,

and for such other and further relief as to this Court may seem just and proper.

THE SHELL COMPANY OF PHILLIPINE ISLANDS LIMITED,
By CRAVATH, SWAINE & MOORE,
By ALBERT R. CONNELLY,
a member of the firm,
Attorneys for Plaintiff,
15 Broad Street,
New York 5, N. Y.

40 *Duly sworn to by Albert R. Connelly. Jurat omitted in printing.*

41-42 GENERAL TRAVERSE IN CASE NO. 48265—Filed March 23, 1949

And now comes the Attorney General on behalf of the United States, and answering the amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the amended petition be dismissed.

(S.) H. G. MORISON.

K.M.B.
D.B.M.

43-44 HISTORY OF PROCEEDINGS IN STANDARD-VACUUM OIL COMPANY, No. 48319

Plaintiff's original petition was filed on December 5, 1947.

On March 24, 1948, on motion made therefor and allowed by the court, plaintiff filed an amended petition.

On April 12, 1948, defendant filed a motion to dismiss claims fifth, seventh, and fifteenth of amended petition.

On June 1, 1948, on motion made therefor and allowed by the court, plaintiff filed a second amended petition.

On June 1, 1948, defendant moved that its motion to dismiss stand to the amended petition. Said motion was allowed by the court.

On November 1, 1948, the court filed an opinion on defendant's motion to dismiss claims fifth, seventh, and fifteenth of amended petition, dismissing that part of the seventh claim stated in paragraphs 64 to 67 of the amended petition, and so much of the
45-46 fifteenth claim as related to the alleged requisition by the defendant of petroleum supplies (112 C. Clms. 137).

On November 19, 1948, defendant filed a general traverse to plaintiff's second amended petition.

On March 28, 1949, certiorari was granted by the Supreme Court on plaintiff's motion.

On April 7, 1950 a mandate from the Supreme Court was filed in accordance with the Court's opinion of March 27, 1950 (339 U. S. 157).

On September 29, 1950, on motion made therefor and allowed by the court, plaintiff filed a third amended petition which is as follows:

47 IN THE COURT OF CLAIMS OF THE UNITED STATES

No. 48319

STANDARD-VACUUM OIL COMPANY, PLAINTIFF

against

THE UNITED STATES OF AMERICA, DEFENDANT

THIRD AMENDED PETITION—Filed September 29, 1950

To the Honorable the Court of Claims of the United States:

Plaintiff, by its attorneys Cravath, Swaine & Moore, alleges upon information and belief:

PANDACAN CLAIM *

1. Plaintiff, Standard-Vacuum Oil Company, is, and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Delaware.

2. Prior to the occurrence in December, 1941, of the events hereinafter alleged, plaintiff was the owner of substantial quantities of

* This Claim was originally set forth as part of the First Claim in the Second Amended Petition herein.

petroleum products and of a large installation for the storage and distribution of such petroleum products, all located in a section of the City of Manila, Philippine Islands, known as Pandacan. Except for certain tank cars, trucks and floating equipment, the properties comprising said installation were as follows:

48 (a) Plant and equipment, including buildings, storage tanks, pipelines, etc., valued at $709,610.93; and

(b) General storehouse materials and spare equipment, canmanufacturing supplies, service station equipment, spare parts, materials and supplies, and empty gasoline drums, valued at $247,113.91.

3. In 1941, prior to the outbreak of the war, the military forces of defendant did not have in the Philippine Islands any war reserves of petroleum products or any facilities for the storage and distribution of petroleum products. During that period all petroleum products used by such military forces in the Philippines were obtained from the commercial oil companies doing business in the Philippines, under contracts setting up a day-by-day call or delivery basis of supply. Commencing in or about May, 1941, representatives of the military forces of defendant advised representatives of plaintiff and the other oil companies maintaining installations at Pandacan that, in the event of war, the stocks of petroleum products and the facilities of the oil companies at Pandacan would be taken over by said military forces, in accordance with the provisions of a United States Army War Plan for the defense of the Philippine Islands. The aforementioned representatives of the military forces of defendant included Major General George Grunert, Colonel (later Brigadier General) Charles C. Drake, Colonel Joseph E. Kramer, Colonel Otto Harwood and Major (later Lieutenant Colonel) Theodore Kalakuka.

4. On December 8, 1941, Philippine time, defendant declared war on Japan. Japanese air raids on the Philippine Islands commenced on that date, and within a few days thereafter the Japanese military forces invaded the Islands. On or about January 1, 1942, substantially all of the Island of Luzon (except Bataan), including the City of Manila, was occupied by such military forces.

49 5. On or about December 12, 1941, at a meeting in the City of Manila attended by representatives of defendant connected with the United States Armed Forces in the Far East (USAFFE) and representatives of the oil companies maintaining installations at Pandacan, it was announced by representatives of defendant that the stocks of petroleum products and the facilities of the oil companies at Pandacan, including those owned by plaintiff, were taken over by USAFFE and that the personnel of the oil companies would continue to operate the installations on behalf of USAFFE. The aforementioned representatives of defendant

included Colonel Drake, Colonel Frank Bersina and Colonel Alva McConnell.

6. After said meeting, USAFFE exercised complete and exclusive control over the stocks of petroleum products and the facilities of plaintiff at Pandacan, and the installation was thereafter operated exclusively for the benefit and upon the instructions of USAFFE. The control by USAFFE over the stocks of petroleum products and the facilities of plaintiff at Pandacan was exercised through officers attached to the USAFFE Quartermaster Corps until December 25, 1941, at which time Colonel (later Major General) Hugh J. Casey, Corps of Engineers, USAFFE, was placed in charge, and such control was continued until December 31, 1941. On December 31, 1941, the stocks of petroleum products and the facilities at Pandacan that had not theretofore been transported to destinations specified by USAFFE or otherwise used by USAFFE were destroyed by representatives of USAFFE pursuant to a prearranged demolition plan.

7. The action taken by USAFFE in respect of the stocks of petroleum products and the facilities of plaintiff at Pandacan was taken in the prosecution of the war with Japan. From and after December 8, 1941, such property was needed by USAFFE for the defense of the United States, and similar facilities were not then sufficiently available in the Philippines to USAFFE. The need of USAFFE therefor was so immediate and impending as not to admit of delay or resort to other means for supplying such need.

8. From and after December 12, 1941, USAFFE exercised complete dominion and control over the stocks of petroleum products and the facilities of plaintiff at Pandacan, and plaintiff was wholly deprived of any rights of ownership therein.

9. On December 31, 1941, USAFFE destroyed the stocks of petroleum products and the facilities then remaining at Pandacan, in order to prevent the same from falling into the hands of the Japanese.

10. Not any part of the stocks of petroleum products and the facilities of plaintiff at Pandacan has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf, except that certain portions of a warehouse, fire wall and two tanks, valued at $16,335.48, were returned in damaged condition on or about May 2, 1946.

11. Defendant, acting by and through the United States Army Claims Service, Manila, Philippine Islands, has paid plaintiff the value of the stocks of petroleum products which were removed from Pandacan prior to December 31, 1941, and has paid plaintiff the value of the stocks of petroleum products which were at Pandacan and which were destroyed as a result of the demolition on December 31, 1941. Defendant, acting by and through said

Army Claims Service, has also paid plaintiff for all tank cars, trucks and floating equipment of plaintiff located at Pandacan. Defendant has failed and refused, however, to pay plaintiff the value of the remainder of the Pandacan facilities.

12. Except as stated in paragraph 11 hereof, not any action has been taken by the Congress or by any department
51 of the Government in respect of the Claim stated herein, or any part thereof.

13. There has not been any assignment or transfer of the Claim stated herein, or any part thereof or interest therein; and plaintiff is, and always has been, the complete owner of said Claim.

14. By reason of the foregoing, plaintiff claims as fair and just compensation the sum of $940,389.36, plus an amount equivalent to interest on said sum at the rate of 6% per annum, under the provisions of the Fifth Amendment to the Constitution of the United States and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-24).

CEBU CLAIM *

15. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 and 4 hereof with the same force and effect as if herein set forth in full.

16. Prior to the occurrence between December, 1941, and April, 1942, of the events hereinafter alleged, plaintiff was the owner of substantial quantities of petroleum products, including supplies of gasoline, kerosene, Diesel oil and lubricants, and of a large installation for the storage and distribution of such petroleum products, all located at or near Cebu, Philippine Islands.

17. Early in December, 1941, Colonel John D. Cook, Quartermaster Corps, USAFFE, investigated the petroleum situation in Cebu and found that USAFFE did not have any bulk stocks of petroleum products there and had only a negligible amount of petroleum products in drums.

18. On or about December 8, 1941, Colonel Cook called a meeting at Cebu City of the local representatives of plaintiff and
52 the other oil companies maintaining installations at Cebu. At that meeting Colonel Cook pointed out, and it was the fact, that such oil companies had in their installations at Cebu the only substantial supplies of petroleum products in the Philippines outside of the Manila area. Colonel Cook then stated that USAFFE was taking over all such supplies of petroleum products, including those owned by plaintiff. Colonel Cook also stated that the oil companies would be allowed to take out a certain amount

* This Claim was originally set forth as part of the Fourth Claim in the Second Amended Petition herein.

of petroleum products from their installations for the use of the local Government and such civilian concerns as were essential to the economy of the people. After said meeting, USAFFE exercised complete and exclusive control over the stocks of petroleum products of plaintiff at Cebu.

19. From December 8, 1941, until April, 1942, under the orders of USAFFE, substantial quantities of said petroleum products were removed from plaintiff's Cebu installation and used by USAFFE. Other substantial quantities of said petroleum products were packaged in tins or drums and removed from plaintiff's Cebu installation to various dispersal points specified by USAFFE in and about Cebu City.

20. On April 10, 1942, the Japanese military forces landed in the Cebu area. Shortly prior to such landing the stocks of petroleum products that had not theretofore been transported to destinations specified by USAFFE or otherwise used by USAFFE were destroyed by representatives of USAFFE in accordance with orders personally given by Colonel Cook pursuant to a prearranged demolition plan. The value of the stocks of petroleum products so destroyed by representatives of USAFFE was $480,276.80.

21. The action taken by USAFFE in respect of the stocks of petroleum products of plaintiff at Cebu was taken in the prosecution of the war with Japan. From and after December 8,
53 1941, said petroleum products were needed by USAFFE for the defense of the United States, and similar supplies of petroleum products were not then sufficiently available in the Philippines to USAFFE. The need of USAFFE therefor was so immediate and impending as not to admit of delay or resort to other means for supplying such need.

22. From and after December 8, 1941, USAFFE exercised complete dominion and control over the stocks of petroleum products of plaintiff at Cebu, and plaintiff was wholly deprived of any rights of ownership therein.

23. On April 10, 1942, USAFFE destroyed the stocks of petroleum products then remaining at Cebu, in order to prevent the same from falling into the hands of the Japanese.

24. Not any part of the stocks of petroleum products of plaintiff at Cebu has at any time been returned, or otherwise made available, to plaintiff or to anyone acting in its behalf, other than the stocks of petroleum products which plaintiff was allowed to take out from the Cebu installation for the use of the local Government and such civilian concerns as were essential to the economy of the people.

25. Defendant, acting by and through the United States Army Claims Service, Cebu, Philippine Islands, has paid plaintiff the value of the stocks of petroleum products which were removed from plaintiff's Cebu installation and used by USAFFE or stored at various dispersal points specified by USAFFE in or about Cebu

City, but defendant has failed and refused to pay plaintiff the value of the stocks of petroleum products remaining at Cebu.

26. Except as stated in paragraph 25 hereof, not any action has been taken by the Congress or by any department of the Government in respect of the Claim stated herein, or any part hereof.

54 27. There has not been any assignment or transfer of the Claim stated herein, or any part thereof or interest therein; and plaintiff is, and always has been, the complete owner of said Claim.

28. By reason of the foregoing, plaintiff claims as fair and just compensation the sum of $480,276.80, plus an amount equivalent to interest on said sum at the rate of 6% per annum, under the provisions of the Fifth Amendment to the Constitution of the United States and under the Act of October 16, 1941, c. 445, 55 Stat. 742 (50 U. S. C. §§ 721-24).

WHEREFORE, plaintiff respectfully prays judgment against defendant in the amount of $1,420,666.16, plus an amount equivalent to interest on said sum at the rate of 6% per annum, and such other and further relief as to this Court may seem just and proper.

STANDARD-VACUUM OIL COMPANY,
By CRAVATH, SWAINE & MOORE,
By ALBERT R. CONNELLY,
a Member of the Firm,
Attorneys for Plaintiff,
15 Broad Street,
New York 5, N. Y.

55-56 *Duly sworn to by L. V. Collings. Jurat omitted in printing.*

57-110 GENERAL TRAVERSE TO THE THIRD AMENDED PETITION IN CASE No. 48319—Filed November 8, 1950

And now comes the Attorney General, on behalf of the United States, and answering the third amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the third amended petition be dismissed.

(S.) H. G. MORISON.

K. M. B.
E. T. F.

111 **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Howell, Judge. Dissenting Opinion by Jones, Chief Judge**—Decided November 6, 1951

Mr. Leo T. Kissam and *Mr. Albert R. Connelly* for the plaintiffs. *Cravath, Swaine & Moore* were on the briefs.

Mr. Kendall M. Barnes, with whom was *Mr. Acting Assistant Attorney General Newell A. Clapp,* for the defendant. *Mr. Assistant Attorney General Holmes Baldridge* was on the brief.

The court, having considered the evidence; the report of Commissioner W. Ney Evans, and the briefs and argument of counsel, makes the following

SPECIAL FINDINGS OF FACT

PANDACAN CLAIM

1. Several years prior to 1941, the United States Army, Philippine Department, began developing strategical plans for the defense of the Philippine Islands in the event of attack. These plans were incorporated in a formel, written compendium known as the Philippine Department Plan—Orange, which was subject to con-
112 tinual refinement. There was a Philippine Department Plan —Orange, 1936 Revision, and a Philippine Department Plan —Orange, 1940 Revision. The 1940 Revision contained a brief statement of general plans, and four Annexes, being one each for G-1, G-2, G-3, and G-4.

2. The tactics of the Orange Plan, as related to the Island of Luzon, called for defensive action at the beaches in the event of enemy landings, to be followed by a slow withdrawal of Army forces to Bataan peninsula, the defense to continue over a period of 180 days, using personnel and supplies available locally.

In planning for the day of emergency (M-Day in the Orange Plan), the Department Quartermaster never acquired or intended to acquire, before M-Day arrived, extensive supplies of petroleum products or extensive facilities for the storage, handling, and distribution of such products. The Quartermaster planning was therefore predicated upon the storage, handling, and distribution facilities and the petroleum stocks of the commercial oil companies operating in Manila.

3. Four commercial oil companies maintained terminals in Manila. The four terminals were adjacent to one another in an area known as the Pandacan District, and are sometimes hereinafter referred to collectively as the Pandacan terminals. Included in the installations and equipment of the Pandacan terminals were: wharves, rail and pipe lines, pumps, storage tanks, warehouses, residences for superintendents, can factories, cans, railroad tank cars, bulk tank trucks, package trucks, and loading facilities.

The companies, each of which owned and operated one terminal, included (1) Caltex (Philippines), Inc.,[1] hereinafter referred to as

[1] A Philippine corporation; formerly The Texas Company (Philippines) Inc.; originally The Texas Company (Philippine Islands) Inc.

Caltex; (2) Asiatic Petroleum Company (Philippine Islands) Limited, which became the Shell Company of Philippine Islands, Limited,[2] hereinafter referred to as Shell; (3) Standard-Vacuum
113 Oil Company,[3] hereinafter referred to as Standard; and (4) Tide Water Associated Oil Company. These companies are sometimes hereinafter referred to collectively as the oil companies.

4. In the refinement of the Orange Plan, 1940 Revision, it was contemplated that the G-4 (Supplies and Logistics) Annex would contain a section to be known as the gasoline supply plan, which was to be prepared by and under the supervision of the Department Quartermaster. A gasoline supply plan was developed by the Department Quartermaster and his staff in 1940 and 1941.

5. In June, 1940, the Commanding General, Philippine Department, held a conference with officers under his command relating to the defense of the Philippines. After this conference work was begun in earnest upon the 1940 Revision of the Orange Plan.

Data were obtained from the oil companies as to (1) the nature of their facilities for the storage, handling, and distribution of petroleum products and (2) the amount of such products on hand from time to time. The Department Quartermaster determined that Army personnel would not be available to operate the oil companies' facilities and that, in the event of emergency, the Army's chief reliance for petroleum supplies would fall upon the oil companies' personnel, as well as their stocks and facilities.

6. The Quartermaster Corps' action of the G-4 Annex to the Orange Plan was revised in April 1941. This revision included a separate Motor Transport Service, under the control of the Department Commander. The M-Day functions of the Motor Transport Service included the procurement of all commercial motor vehicles required to meet all shortages existing at the time, and the establishment of motor transport centers for the operation and maintenance of pooled transportation.

7. The representative in charge of Standard's terminal at Pandacan had been placed there by the company for the specific purpose of dealing with the increasing problems of defense. Prior to June 1941, he had had conversations with officers of all the armed forces, the Army, the Navy, and the Air Force, concerning their needs for oil in the event of war. He was fully conversant with the intention

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[2] A British corporation. The Government of the United Kingdom of Great Britain and Northern Ireland accords to citizens of the United States of America the right to prosecute claims against such Government in its courts.

[3] A Delaware corporation.

of the Army Quartermaster Corps to rely, in the event of
114 war, upon the supplies, facilities, and personnel of the oil companies for the supply, storage, handling, and distribution of petroleum products. He referred to these plans in terms of the Army "taking over," as did representatives of other oil companies and many Army officers, then and later.

In June 1941, the Commanding General, Philippine Department, United States Army, invited this representative of Standard to his headquarters, referred to the mounting tension in the Orient, and asked the Standard representative to see that the Pandacan terminals were provided, forthwith and at the oil companies' expense, with certain equipment and procedures which the Commanding General deemed necessary or expedient for security and protection against possible sabotage. The Commanding General explained that his requests were for measures which the Army deemed necessary and which, in the event of war, the Army would itself provide or establish when it "took over." The oil companies thereafter initiated some of the procedures and provided some of the equipment requested. Other requests were ignored.

8. In June 1941, the Army's needs for petroleum products were obtained from the oil companies, by contract, on a day-by-day call or delivery to the different Army stations throughout the Philippines. This situation had obtained for several years and continued unchanged into December 1941. The Army had limited stocks of petroleum products in the nature of a war reserve, consisting of 300,000 gallons stored in small tanks at various places on Luzon and Corregidor, and 897,000 gallons of gasoline supplied from the United States in steel drums. The drums had been asked of the War Department for use as additional storage, and had arrived filled with gasoline. The Quartermaster Corps estimated the Army's need, for 180 days' defense in the event of hostilities, to be in excess of 5,000,000 gallons. When M-Day arrived, the oil companies had on hand approximately 7,000,000 gallons.

9. In June 1941, the Department Quartermaster called a conference of officers on his staff and representatives of the oil companies. Each of the oil companies was represented at the conference. The officer who conducted the conference for the
115 Department Quartermaster reviewed the necessity for the Army to rely upon the oil companies in the event of war and stressed two points: (1) the need of the Army for petroleum products to the extent of at least 50 percent of the volume storage capacity of the Pandacan terminals, and (2) the Army's need to rely upon the personnel and facilities of the oil companies to handle and distribute the petroleum products. The oil companies readily agreed to make their personnel and facilities available if and when the Army "took over" in the event of war. There was some discus-

sion before understanding was reached about the storage of petroleum products to the extent of 50 percent of capacity. Officers of the Quartermaster Corps put forward the suggestion that each of the companies should maintain a reserve of 50 percent of storage capacity. The representatives of the oil companies, considering this suggestion impractical, countered with a proposal, which the Army officers accepted, to maintain reserves of 50 percent of the collective capacity of the Pandacan terminals. The conference agreed upon a system of reports whereby the oil companies would and did keep the Department Quartermaster advised periodically of the volume of petroleum stocks on hand.

10. On July 28, 1941, the command known as USAFFE (United States Armed Forces in the Far East) was created, and General Douglas MacArthur was placed in command. The Philippine Department, United States Army, was continued in the echelon of command under Headquarters, USAFFE.

The officer who was then Department Quartermaster became Chief Quartermaster, USAFFE. He continued to discharge the duties of both offices until October 25, 1941, when he was relieved as Department Quartermaster.

In November 1941, after the former Commanding General of the Philippine Department of the Army had been relieved and assigned to other duties, the Philippine Department was absorbed in the USAFFE Field Service Command, which was thereafter sometimes referred to as the Philippine Department Service Command. General MacArthur retained command of the Philippine Department Service Command as well as USAFFE. The order establishing the USAFFE Field Service Command and defining its functions was vague in defining and limiting the duties of control, administration, operation, and maintenance to the various echelons of command, and caused some confusion in the minds of the officers charged with the duties above mentioned:

116

A recommendation by the Chief Quartermaster, USAFFE, that control of the Motor Transport Service be transferred from the Philippine Department Service Command to Headquarters, USAFFE, was never acted upon.

11. General MacArthur ordered extensive changes in the defense plan.[4] Most significant among them was a change in tactical operations, calling for defense of the Island of Luzon at the beaches, without a withdrawal to Bataan. Some time prior to December 1, 1941, the Chief Quartermaster, USAFFE, was advised by the USAFFE Deputy Chief of Staff that the Department Defense Plan had been discarded as far as Bataan was concerned. Changes were

[4] The required changes were never fully documented, and no formal defense plan was promulgated after the creation of USAFFE.

accordingly made by the Chief Quartermaster in the plans for advance quartermaster depots elsewhere on the Island of Luzon.

These changes affected the gasoline supply plan theretofore formulated to the extent of requiring more detailed plans for the establishment of distribution centers and issue points. The basic plan to rely on the petroleum stocks, facilities, and personnel of the oil companies for the supply, storage, handling, and distribution of petroleum products for use by troops in the field remained unchanged, except for more specific channeling to distribution centers and issue points.

12. On December 1, 1941, following an alert from Washington, all USAFFE troops on Luzon were moved to prealloted positions of observation and readiness.

At that time responsibilities and authority were divided among officers of the Army as hereinafter described.

The Commanding General retained over-all command of Headquarters, USAFFE, and the Philippine Department Service Command, United States Army.

The Commanding General's Chief of Staff was next in
117 authority at Headquarters, USAFFE. (During hostilities he became primarily occupied with tactical operations, while the Deputy Chief of Staff became primarily occupied with logistics.)

The Chief Quartermaster, USAFFE, was charged with control of the supply and maintenance facilities of the Quartermaster Corps, including staff supervision and inspection.

The Philippine Department Service Command Quartermaster (formerly the Department Quartermaster) was without tactical control, but was charged with the administration and operation of the supply and maintenance facilities and the command of the personnel and troops assigned to such facilities.

The Quartermaster Corps of the Philippine Department Service Command included, under the Philippine Department Service Command Quartermaster, as Commanding Officer, the Philippine Department Service Command Quartermaster Office, the Philippine Department Service Command Quartermaster Depot, and the Philippine Department Service Command Motor Transport Depot. The Philippine Department Service Command Quartermaster Office included a construction division and a real estate division.[5]

The Commanding Officer of the Quartermaster Depot was responsible for the procurement of petroleum products intended for use by the Army. In the procurement of such products orders were

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[5] These echelons of command and facilities are hereinafter referred to as (1) the Department Quartermaster, (2) the Quartermaster Depot, (3) the Motor Transport Depot, and (4) the Real Estate Division.

placed by him or at his direction with the oil companies for delivery under contract. He had no authority to acquire automotive equipment or real property.

The Commanding Officer of the Motor Transport Depot[6] was responsible for the procurement of automotive vehicles. By December 1, 1941, he had compiled a list of several hundred cars and trucks in the vicinity of Manila. In the event it should become necessary to procure such privately owned vehicles, this officer was authorized to enter into rental contracts under the terms
118 of which the Army would pay an agreed monthly rental until such time as the rental that had been paid equalled the value of the vehicle, whereupon title would pass to the United States. If the vehicle should be lost before its value had been paid, its value would be paid to the owner.

The Real Estate Division was created in November 1941, for the purpose of centralizing the acquisition of real property under the Department Quartermaster. Other echelons of command were informed that no commitments for real property were to be made by them, in order that the Quartermaster could have a free hand in negotiations. The Chief of the division had authority to negotiate "temporary" leases which were leases for limited periods. In practice the limitation usually took the form of a firm commitment for rental to the next June 30 (end of the fiscal year) and an option to renew for one year thereafter. The amount of the rental to be paid was subject to negotiation and determination by the Chief of the division.

Demolition of property was a function of the engineers, who were under the command of the Chief of Engineers, USAFFE.

Prior to December 1, 1941, no authority to make wartime requisitions, in the sense of commandeering either the use or title of private property had been delegated by the Commanding General to any officer under his command.

13. In the early morning hours of December 8, 1941 Manila time, word reached Manila of the attack on Pearl Harbor. Air raids on the Philippines were begun by the Japanese on the same day.

The Commanding Officer of the Motor Transport Depot undertook at once to procure privately owned motor vehicles. He had no authority to requisition them from their owners. He telephoned all automotive dealers in Manila and asked them for their voluntary cooperation, to refuse to sell until he could get his requirements satisfied. He stationed a representative at each place of business to

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[6] The Philippine Department Motor Transport Service, established in April 1941, was divided, under the Philippine Department Service Command, into a Motor Transport Depot and a Motor Transport Pool.

assist the dealers, who did cooperate with him. Other representatives of his office obtained from private owners many vehicles, cars, buses, and trucks, with their civilian drivers, and sent them to a reception center for inspection, servicing, and assignment.
119 Each owner was given a receipt for the equipment obtained from him, which was to be followed by formal rental contracts as described in finding 12.

An order had been or soon thereafter was issued by the Commanding General directing every officer who took property from any civilian owner to give a receipt therefor.

14. Many demands for petroleum products were made by officers of the Army, the Navy, and the Air Force, upon the Pandacan terminals, the up-country bulk storage plants, and local filling stations.

Within a day or two after the attack, the President of the Philippine Commonwealth issued a proclamation restricting the sale of petroleum products to essential civilian services, such as public officials, hospital (ambulances), Red Cross, fire departments, and health facilities (sanitation).

The Commanding General, USAFFE, took note of the presidential proclamation and expressed concern over measures that would assure supplies of petroleum products for the armed forces. The problem was discussed by the Chief Quartermaster, USAFFE, with the office of the Chief of Staff, and the Chief Quartermaster was instructed by the Chief of Staff to take control of the operation of supply and distribution of petroleum products from the tanks of the oil companies to the troops in the field, and to use the oil companies' facilities and personnel to accomplish the distribution.

15. On December 12, 1941, the Chief Quartermaster, USAFFE, called a meeting which was attended by representatives of each of the oil companies and by interested officers of the Navy.

At the meeting explanation was made that control of the operation of supply and distribution (as stated in finding 14) would be under the Department Quartermaster, with the Commanding Officer of the Quartermaster Depot actively in charge and giving orders through a civilian employee[7] of the Army; that a control officer, representing the Depot Commander, would be stationed at Pandacan to
120 sign sales tickets or receipts for the petroleum products that went out to the Army; that the Army would sign and pay for only what it took for its use; that the terminal facilities at Pandacan, including personnel, loading facilities, containers, tank trucks, tank trailers, and tank cars, would be required to move the

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[7] The civilian employee had at one time been employed by Caltex, and later had operated his own business. The only function which the evidence specifically defined as having been performed by him was the organization of convoys moving from Pandacan.

gasoline and oil; and that the oil companies should take their instructions from Army personnel.

16. Immediately after the meeting described in the preceding finding, the Chief Quartermaster, USAFFE, instructed the Commanding Officer of the Quartermaster Depot to have the control officer whom he placed in charge at the Pandacan terminals make tally slips so there would be a record of how much was going out and where it was going; and to keep records of the amounts issued at the filling stations.

Within a few hours after the meeting described in the preceding finding, the Department Quartermaster told the Chief of the Real Estate Division that "we have taken over Pandacan, lock, stock, and barrel," and instructed him to proceed at once to negotiate with the oil companies for temporary leases of their terminals, including the land, buildings, storage tanks, and other fixed installations.

At about the same time the Department Quartermaster instructed the Commanding Officer of the Quartermaster Depot to station security guards at the filling stations as well as at Pandacan.

17. Army enlisted men began patrolling the railroad yards adjacent to Pandacan before the meeting described in finding 15. Immediately after that meeting security patrols and control officers (also enlisted men) were stationed at the Pandacan terminals, at the up-country bulk storage facilities used as distribution centers, and at the filling stations used as issue points. Records were made by the control officers at the Pandacan terminals of the petroleum products removed for the Army, civilian orders for such products were scrutinized, and the control officers assisted in the supervision of civilian workmen (some of whom were in a labor pool employed by the Army) engaged in packaging and loading petroleum products for shipment. These enlisted men (security patrols and control officers) remained at the Pandacan terminals and carried on
121 their duties until December 24, 1941, possibly two or three days thereafter. The personnel of the oil companies remained on the job, taking instructions from Army personnel, through December 31, 1941.[8]

18. During the first few days of hostilities, officers of the armed forces, without regard to the echelons of their command, commandeered privately owned automotive equipment indiscriminately.

On December 14, 1941, the Commanding General authorized and directed the immediate requisition for title of needed automotive equipment by the Motor Transport Depot Commander. Thereafter,

[8] The Standard representative described in finding 7 dealt with Air Force officers and not with Army Quartermaster Corps officers in the disposition of Standard's aviation gasoline.

this Commander requisitioned for title some, if not all, of the trucks and tank cars belonging to the oil companies.

19. On December 17 or 18, 1941, the Standard representative described in finding 7 conferred with the Deputy Chief of Staff and expressed his concern over the failure of the Army to give him something in writing with respect to the Army's actions pertaining to Standard's Pandacan terminal. The Standard representative had received a charter party in writing from the Navy for a Standard vessel the Navy had taken. The Deputy Chief of Staff agreed that Standard was entitled to something in writing and called the Chief Quartermaster, USAFFE, who said that the Quartermaster Depot Commander was working on the matter and would handle it. The Standard representative knew that the Quartermaster Depot Commander had been a contracting officer with authority to bind the Government, and was satisfied with the explanation. Nothing in writing was thereafter received by the Standard representative from the Quartermaster Depot Commander.

20. On December 23, 1941, the Commanding General ordered the withdrawal of all USAFFE troops on Luzon to Bataan peninsula. The Chief Quartermaster, USAFFE, and the Department Quartermaster and his staff, including the Commanding Officers
122 of the Quartermaster Depot and the Motor Transport Depot and the Chief of the Real Estate Division, moved to Bataan (or Corregidor) on December 24, 1941.

Events had moved too rapidly for the officers of the Quartermaster Corps to complete their paper work. At the time of their departure from Manila the Quartermaster Depot Commander had not paid or arranged for payment to the oil companies for the petroleum products taken from the Pandacan terminals for Army use on and after December 12, 1941; and the Chief of the Real Estate Division had not negotiated or arranged for the negotiation with the oil companies for temporary leases of their terminal sites and fixed installations. The Chief of the Real Estate Division took with him to Bataan the names of the four oil companies as part of a list of 200 owners of property with whom transactions had not been completed. The extent, if any, to which the Motor Transport Depot Commander had paid or arranged for payment to the oil companies for their automotive equipment and rolling stock is not established by the evidence.

21. During December 1941, no officer in the Quartermaster Corps, United States Army, possessed authority, except insofar as it was delegated to him by the Commanding General, to commandeer or requisition the use or title of the stocks of petroleum products, the land, fixed installations, equipment, supplies, or rolling stock of the oil companies on Pandacan. Such authority was not delegated by

the Commanding General to officers of the Quartermaster Corps except as described in findings 13 to 20.

22. On December 25, 1941, General MacArthur declared Manila an open city. On the day before General MacArthur and his Chief of Staff had moved to Corregidor, and the ranking officer of Headquarters, USAFFE, remaining in Manila was the Deputy Chief of Staff. The Chief Engineer, USAFFE, was also in Manila.

On December 25, 1941, the Chief Engineer, USAFFE, prepared and signed four letters addressed to the four oil companies, the text of which follows:

> Effective immediately all petroleum stocks, storage and handling facilities, etc., at your Manila, Pandacan oil depots are requisitioned by the U. S. Army. Any action deemed
> 123 necessary for the destruction of this property will be handled by the U. S. Army. However, your personnel must remain on duty under the direction of the U. S. Army and obey any instructions given them by the U. S. Army.
>
> Your full and active assistance and cooperation are requested.
>
> By command of General MacArthur.

It is not established by the evidence that any of the four letters was delivered to any of the addressees before December 27, 1941.

23. On December 25, 1941, a young engineer in the employ of Standard was commissioned a first lieutenant in the Army Corps of Engineers. On the following day he received orders from the Chief Engineer, USAFFE, to expedite the removal of petroleum products from the Pandacan terminals and to prepare the terminals for demolition at a date then undetermined.[9] In the morning of December 27, 1941, the lieutenant went to Pandacan, called a meeting of representatives of the oil companies who were on duty there, explained his mission, stressed the urgency of expediting shipments, and reported that a demolition network was being laid. The demolition charges and network were in place within two or three days.

In the course of his work at Pandacan the lieutenant gave the terminal superintendent of Caltex a penciled receipt for all stocks, supplies, buildings, rolling stock, pipelines, and pumps of Caltex.

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[9] Removal of petroleum products from the terminals, under the Chief Engineer's order, was necessary (1) to augment the usable supplies of the Army and (2) to facilitate demolition, since the destruction of large quantities of oil in place would increase the hazard of fire spreading beyond the terminals. Measures were also under consideration, in connection with the removal of petroleum products from Pandacan and their destruction, for combining various products into an unusable emulsion.

The lieutenant had not been ordered by the Chief Engineer, USAFFE, to give such a receipt.

24. On December 27, 1941, representatives of each of the four oil companies attended a meeting at which the Deputy Chief of Staff and the Chief Engineer, USAFFE, were present. An air raid occurred, and the participants in the meeting conferred as best they could in an air raid shelter with much noise from the outside.

.124 The representatives of the oil companies were advised that the Chief Engineer, USAFFE, was then in charge of the Pandacan terminals, that efforts should be redoubled to remove the petroleum products, that the equipment and unmoved stock would have to be destroyed, and that they would receive orders in due course pertaining to destruction.[10] Two or more of the representatives of the oil companies protested having anything to do with demolition, in view of the probability of having to answer to the Japanese, and the Chief Engineer agreed to take care of the demolition.

25. Just before or just after the meeting described in the preceding finding, the Chief Engineer prepared and the Deputy Chief of Staff signed letters addressed to each of the four oil companies. The text of the letters follows:

> Under authority vested in this Headquarters under present war conditions, you are hereby directed to destroy at once *all* petroleum products in your plant and stations and to so disable all vital parts of your plant and stations as to deny their use to the enemy.
>
> By command of General MacArthur.
>
> *Note.*—This letter is undated but is to become effective on telephonic or personal instructions issued to you by a designated representative of this Headquarters.

The Chief Engineer prepared these letters and obtained the signature of the Deputy Chief of Staff on them to protect the oil companies against any possible deficiency in the authority in him to write the letters which he had signed on December 25, 1941.

26. Shortly after the meeting described in finding 23, the Chief Engineer's letters of December 25, 1941 (finding 22) were delivered to representatives of Standard and Shell. It is not established by the evidence that the identical letters to Caltex and Tide Water were or were not delivered to representatives of those companies.

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[10] If measures had been adopted to combine various oils into unusable emulsion, the work would have been done by civilian personnel employed at the terminals, and would have involved personnel employed by the oil companies. Such measures were never adopted.

The undated letters signed by the Deputy Chief of Staff (finding 25) were never delivered to the representatives of Standard and Shell who received the Chief Engineer's letter of December 25, 1941. It is not established by the evidence that the undated letters addressed to Caltex and Tide Water were or were not delivered to representatives of those companies or that the undated letters addressed to Standard and Shell were not delivered to representatives of those companies other than the representatives who received the Chief Engineer's letter of December 25, 1941.

125

27. The demolition of the petroleum products remaining in and the installations of the Pandacan terminals was carried out at 5:40 p. m., December 31, 1941, by Army personnel acting under orders of the Chief Engineer. The demolition mission was successful in that the Pandacan facilities were rendered useless to the enemy as terminals and all petroleum products were destroyed.

28. The Chief Engineer, USAFFE (being the same individual described in that capacity in previous findings), returned to Manila in the liberation in February 1945. For a while after the liberation the site of the Pandacan terminals was occupied by the Army. Representatives of the oil companies applied to the Chief Engineer for release of the land. From time to time during 1945 and 1946, as the Army finished with its use of portions of the land, the oil companies reoccupied such portions, until all the land was again in their control.[11]

29. On December 12, 1941, the United States Army took control of the operation of supply and distribution of petroleum products from the stocks on hand of the oil companies at their Pandacan terminals to the troops in the field. In the exercise of this control the Army used the land, buildings, fixed installations, equipment, containers, rolling stock,[12] and personnel of the oil companies' Pandacan terminals. Such use was continued through December 26, 1941. In the course of the operation the Army acquired for its own use petroleum products and containers belonging to the oil companies in amounts not specified by the evidence. Additional petroleum products in amounts not specified were, in the course of the operation, supplied and distributed for civilian use on orders from civilian agencies to the oil companies.

126

30. On December 27, 1941, the United States Army requisitioned all remaining petroleum stocks, and all storage and handling facili-

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[11] The oil companies make no claim for compensation for the use of the land on which the Pandacan terminals were situated, either at the beginning or at the end of hostilities.

[12] Cf. finding 18. Some of the rolling stock of the oil companies was requisitioned for title while in use.

ties at the Pandacan terminals of the oil companies. The requisition was in anticipation and for the purpose of destruction to prevent items of military value from falling into the hands of the enemy.

31. Defendant has refused to make any payment to Caltex on account of the Pandacan terminal facilities owned by Caltex.[13]

32. Defendant has refused to pay Shell for any of the Pandacan terminal facilities for which Shell claims in the First Claim of its Amended Petition.[14]

33. Defendant has refused to pay Standard for any of the Pandacan terminal facilities for which Standard claims in its Third Amended Petition.[15]

SEVENTH CLAIM [16]

34. On or about April 3, 1942, Shell sold and delivered to defendant at Cebu, Philippine Islands, for use on United States Navy submarines, 131.44 metric tons of Diesel fuel oil, for which defendant promised and agreed to pay the sum of $3,943.20.

35. No part of the purchase price of said fuel oil so sold and delivered has been paid by defendant.

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[13] Plaintiff's petition asserts claims for the value of (1) automotive equipment, (2) tank cars, (3) tank trucks (IHC), and (4) tank truck (White). It is not established by the evidence that any of these items of rolling stock was or was not requisitioned for title by the Motor Transport Depot Commander.

Plaintiff has abandoned the claim asserted in its petition for the value of petroleum and allied products, having executed a release to defendant for "stocks of petroleum products at Pandacan" in return for payment to plaintiff by defendant for "various quantities of Diesel fuel oil, gasoline, and lubricating oil."

[14] Paragraph 9 of such petition eliminates from the claim (1) petroleum products and (2) ten bulk trucks and one closed van.

[15] Paragraph 11 of such petition eliminates from the claim (1) petroleum products, (2) rolling stock, and (3) marine equipment.

[16] On July 15, 1949, the Court allowed plaintiff's motion to sever the second, third, fourth, fifth, and sixth claims in its Amended Petition, and to postpone the taking of testimony with respect to them in order that proof might be closed on the first and seventh claims, covered herein.

CEBU CLAIM

36. In addition to the Pandacan terminals at Manila, on the Island of Luzon, three of the oil companies,[17] of which Standard was one, owned and operated terminals [18] on the Island of Cebu.

127

37. In November 1941, the Chief Quartermaster, USAFFE, arranged for the dispatch of an officer of the Quartermaster Corps to Cebu to establish and command an advance Quartermaster Depot. This depot commander was authorized and directed to procure supplies for USAFFE, including petroleum products, for use in the southern islands of the Philippines, and to exercise his discretion as to the manner of procurement.

Upon investigation the depot commander found that USAFFE had no bulk stocks of petroleum products in or near Cebu, and only a negligible amount of petroleum products in drums. It had been determined at USAFFE headquarters not to send supplies of petroleum products to Cebu from Manila. The only supplies of such products in the Cebu area were those of the oil companies.

38. On December 8, 1941, the Cebu depot commander called a meeting of representatives of the oil companies and declared (1) that in the name of USAFFE he was taking over all their supplies of petroleum products and (2) that he was freezing the price of such products at the current Army contract rate. He further stated that the oil companies would be allowed to take out a certain amount of stock from their terminals for the use of the local government and such civilian agencies as were essential to the economy.

39. Within a few days after December 8, 1941, the depot commander had established control over the oil companies' terminals and had placed military patrols. An order was issued by him that no petroleum products should be withdrawn without approval by him or his authorized representative.

Work was begun on the packaging of petroleum products in tins or drums and the removal of such products for use or for dispersal to warehouses and supply dumps for protection against possible enemy bombing.

Records were maintained of the amounts of petroleum [illegible] stocks (1) removed and (2) on hand at the terminals. Petroleum products released to civilians or for civilian purposes

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[17] Standard, Caltex, and Shell.

[18] Standard's Cebu installation, known as the Opon terminal, included oil storage tanks, pipelines, pumping equipment, dock facilities, warehouses, can-making machinery, containers, and supplies of petroleum products. Only the supplies are in issue in Standard's Third Amended Petition.

were recorded as stock credits against the amount initially taken by and for the Army. The oil companies were permitted to charge for the amounts so released at prices obtaining for local civilian use.

During the course of this operation some bills were submitted by Standard to the Army for petroleum products removed from its Opon terminal for use or dispersal by the Army. It is not established by the evidence that any of such bills was or was not paid.

40. On April 10, 1942, the oil companies' terminals and the petroleum products remaining in them were destroyed by order of the depot commander pursuant to a prearranged demolition plan. The demolition was performed to prevent the facilities and supplies from falling into the hands of the enemy. Japanese forces were in the harbor when the demolition occurred, and began their landings on Cebu within hours thereafter.

41. Defendant has paid Standard for the petroleum products removed from Standard's Opon terminal for use or dispersal but has refused to pay for the petroleum products remaining in the terminal and destroyed with it. The products so remaining and so destroyed were on hand at the Opon terminal when the depot commander on December 8, 1941, took all of Standard's petroleum products in the name of USAFFE.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes that as a matter of law the plaintiff, The Shell Company of Philippine Islands, Limited, is entitled to recover, and it is therefore adjudged and ordered that plaintiff recover of and from the United States three thousand nine hundred forty-three dollars and twenty cents ($3,943.20).

The court further concludes that as a matter of law the plaintiffs, Caltex (Philippines), Inc., Standard-Vacuum Oil Company, and The Shell Company of Philippine Islands, Limited, are entitled to recover on their Pandacan claims, and plaintiff Standard-
129 Vacuum Oil Company is entitled to recover on its Cebu claim, the exact amounts being reserved for further proceedings under Rule 38 (c).

Opinion

Howell, *Judge;* delivered the opinion of the court:

Plaintiffs in these three suits, which have been consolidated, are The Shell Company of Philippine Islands, Ltd., Standard-Vacuum Oil Company, and Caltex (Philippines), Inc., hereinafter referred to as Shell, Standard, and Caltex, respectively. All are corporate entities which, at the time this cause arose, were engaged in the commercial distribution of petroleum products in the Philippine Islands area. Each of the plaintiffs maintained storage and terminal

facilities in the Pandacan District of Manila, P. I., and on the Island of Cebu.

All three oil companies are suing for just compensation for the taking of their terminal facilities at Pandacan (Findings 1 through 33).

Standard makes an additional claim for just compensation for petroleum products which were in its terminal at Cebu at the time the terminal was taken on December 8, 1941, by the depot commander in the name of USAFFE, and which were destroyed along with Standard's terminal on April 10, 1942. Standard is not making any claim for just compensation for the taking of its terminal facilities on Cebu (Findings 36 through 41).

Shell is suing for $3,943.20 for 131.44 metric tons of Diesel fuel oil sold and delivered by Shell, on or about April 3, 1942, to defendant at Cebu for use on United States Navy submarines. Defendant promised and agreed to pay the amount claimed but has not done so (Findings 34 and 35)

PANDACAN CLAIM

For several years prior to the outbreak of war with Japan, the United States Army had maintained detailed plans for the defense of the Philippine Islands. These plans recognized the need for large quantities of petroleum supplies in an extended defense effort. The Army did not possess adequate storage facilities of its own to carry on a full scale war effort. Rather, it procured its day-to-day
130 petroleum requirements from the commercial oil companies and planned to rely upon their stored supplies in the case of an emergency. The oil companies were aware of and acquiesced in this plan, cooperating with the Army by maintaining certain stock levels so that the Army might be assured of adequate supply in case of sudden mobilization.

On December 7, 1941, war between the United States and Japan commenced at Pearl Harbor. Simultaneously, the Japanese attack on the Philippines got under way. The Army immediately commandeered quantities of motor transport, including vehicles belonging to the plaintiffs. On December 12, 1941, the Army took control of the operation of supply and disposition of petroleum products from the stocks on hand of the oil companies at their Pandacan terminals to the troops in the field. In the exercise of this control the Army used the land, buildings, fixed installations, equipment, containers, rolling stock, and personnel of the oil companies' Pandacan terminals (Finding 29). Army authorities kept track of the amount of petroleum products going to military users and organized the movements of petroleum to the field. It was understood that the Army would pay for all the petroleum taken for its own use. The Army also screened orders from civilian

sources, allowing sales only to essential users such as the fire department, ambulances, etc. Measures were taken to safeguard the facilities by the use of troops, and the personnel of the oil companies remained on the job taking instructions from Army personnel.

An effort was made by the Army to negotiate temporary leases with the oil companies of their terminal facilities, but the press of the Japanese invasion did not allow time for the completion of such agreements before it became necessary to abandon Manila (Finding 20).

Until December 27, 1941, no officer in the Quartermaster Corps, United States Army, possessed authority, except to the extent that it was delegated to him by the commanding general, to commandeer or requisition the use or title of the stocks of the petroleum products, the land, fixed installations, equipment, supplies, or rolling stock of the oil companies on Pandacan. Such authority was not
131 delegated by the commanding general to officers of the Quartermaster Corps on Pandacan except as described in Findings 13 to 20.

Between December 25 and 27, 1941, the oil companies were notified that their remaining stocks together with all terminal facilities were to be requisitioned and that whatever part could not be transported to the Army in the field was to be destroyed. Officials of the oil companies were reluctant to take the responsibility for destruction because of the imminent necessity of answering to the Japanese, and the Army agreed to take care of the demolition. On December 27, 1941, the Army requisitioned all remaining petroleum stocks and all storage and handling facilities at the Pandacan terminals of the oil companies, and on December 31, 1941, in fulfillment of planned military policy, the terminal facilities and all products remaining therein were demolished by the Army for the purpose of denying their use to the Japanese.

The United States has paid plaintiffs for rolling stock requisitioned and for such of the petroleum stocks in the Pandacan terminals as were used by the Army. The United States also paid plaintiffs for the petroleum stocks which were in the terminals and were destroyed at the time of the demolition. Defendant has refused to compensate plaintiffs for the loss of terminal facilities at Pandacan on the ground that these properties were taken on December 27, 1941, for the sole purpose of destruction in order to prevent their use by the enemy. The Government contends that such a taking is not compensable under the Fifth Amendment.

Plaintiffs base their claims for just compensation for the Pandacan terminal facilities upon the Requisition of Military Materials Act of October 16, 1941, 55 Stat. 742-43, as amended, 50 U. S. C. App. § 721-24, and upon the Fifth Amendment to the Constitution, contending (1) that the terminals were taken for public use by the

United States on December 12, 1941, and were used by the Government until destroyed on December 27, 1941, and (2) that if taken for the first time on December 27, 1941, and solely for the purpose of destruction to keep the terminals from the enemy, such a taking is compensable.

Inasmuch as this court must render a judgment for just compensation where there has been a taking by the United States
132 of private property for public use on the basis of the constitutional requirement alone, no purpose is served in a discussion of the applicability of the statute in this instance, particularly as it is apparent that no effort was made to comply with that Act. The question of damages has been separated from that of liability under Rule 39 (b) (1949 Reprint),[19] and accordingly the only question before the court is whether or not there was a taking of plaintiffs' terminal facilities on Pandacan [20] for public use for which the Government is required to make just compensation.

The plaintiffs contend that the Army's act of taking over the control of operation of supply and distribution on December 12, 1941, amounted to a "taking" of the terminal properties for use on that date and that such use continued until the moment of destruction on December 31, 1941.

From the record it appears that the officers in the Quartermaster Corps did not have authority to take title to plaintiffs' terminal facilities on Pandacan prior to December 27, 1941, and that no formal act of requisition took place until that date. Regarding the substance of the Army's acts as related in detail in the findings, and in the light of the situation known to exist, we do not believe that the control exercised by the Army between December 12, 1941, and December 27, 1941, amounted to a taking of plaintiffs' terminal facilities on Pandacan for public use. The Army control in this instance, all circumstances considered, seems no more complete to us than that exercised by Army meat inspectors in the Safeway [21] case. In that case it appeared that the Army representatives enforced Government set-aside orders, inspected and rejected meat at the slaughterhouse, regulated shipments, etc. Besides that, the Government, through other agencies, controlled the amount of beef slaughtered, the cuts prepared, and the prices charged. Later, the Government required Safeway to deliver to it certain portions of the beef set aside. We held the product to have been taken, for

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[19] Under the new 1951 Rules, the applicable rule is 38 (c).

[20] Standard's claim for just compensation for oil products alleged to have been taken from Standard's Cebu properties is also before the court under Rule 39 (b) (1949 Reprint, new Rule 38 (c)) on the question of liability, and will be dealt with separately in this opinion.

[21] *Safeway Stores, Inc.* v. *United States*, 118 C. Cls. 73.

public use, but it was never contended that the slaughter-
133 house itself was taken. In that case, as in this,[22] the facility itself was subjected to regulations permissible under the Government's police and war powers, but was not taken for public use.[23] We have no doubt that the petroleum set aside for the use of the Army in the instant case was taken for public use. However, as the Government has paid plaintiffs in full for all the petroleum used and destroyed on Pandacan, this problem does not confront us.

We conclude that the Government's actions with respect to plaintiffs' Pandacan terminal facilities between December 12, 1941, and December 27, 1941, did not amount to a taking of those facilities.

On December 27, 1941, the Government formally requisitioned the Pandacan terminals for destruction. By this date it was apparent that the area would have to be yielded to the enemy, and it had been determined that the terminals and their contents should be destroyed to deny them to the enemy. The Army took over the preparation for demolition and the actual demolition in part, at least, at the instance of the oil companies representatives, who, understandably, did not want to answer to the Japanese for such an act. From December 27, 1941, to the moment of demolition on the afternoon of December 31, 1941, the Army had complete control of the premises and was engaged in removing petroleum to the field and in laying the demolition charges. On the latter date the entire terminal facilities were destroyed to deny their use and contents to the Japanese, who were by this time already entering Manila.

The only use the Army made of plaintiffs' terminal facilities following the requisition on December 27, 1941, was to destroy them. The plaintiffs claim that this destruction was such a public use as entitles them to just compensation for the destroyed terminals. Defendant's position is that the governmental destruction of property in a time of great peril to prevent its falling into the hands of the enemy is noncompensable and that the loss must remain where it falls as one of the general ravages of war.

The courts of the United States have had little occasion to
134 delineate the extent of the exception urged by defendant to the fundamental principle that the power of requisition in time of war is subject to the constitutional prohibition of the Fifth Amendment against the taking of private property for public use

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[22] At least during the period from December 12 to December 27, 1941.

[23] Cf. *Aleutian Livestock Co., Inc.* v. *United States*, 119 C. Cls. 326; *Oro Fino Consolidated Mines, Inc.* v. *United States*, 118 C. Cls. 18; *St. Regis Paper Co.* v. *United States*, 110 C. Cls. 271, cert. den., 330 U. S. 815.

without just compensation. It has been made clear, however, that the war power conferred upon Congress by the Constitution does not abrogate this constitutional guaranty; it is not suspended or affected by war or the conditions following thereafter, nor is it subject to being taken away by statute. Generally, when private property is requisitioned or confiscated for war purposes, the owner thereof is entitled to, and the Government is obligated to pay just and full compensation therefor. See Annotation 137 A. L. R. 1290 and the cases cited therein. Further, it is settled that property to be compensable if seized need not be a specific interest or estate, but may amount only to an agreement covering an indefinite period. *Portsmouth Harbor Land & Hotel Company* v. *United States*, 260 U. S. 327; *United States* v. *Causby*, 328 U. S. 256; *United States* v. *General Motors Corp.*, 323 U. S. 373; *Johnson* v. *United States*, 2 C. Cls. 391.

Ordinarily, cases involving the question of just compensation under the Fifth Amendment involve the Government's exercise of its power of eminent domain or the question of whether or not some exercise of the Government's regulatory authority has amounted in law to a taking of another's property. The instant case is of a rarer type involving the seizure by the military authorities of property, the destruction of which is urgently required for the defense of the republic.

The power of the military to seize and use property was upheld by the United States Supreme Court in 1851 in *Mitchell* v. *Harmony*, 54 U. S. 115. In deciding that case, Chief Justice Taney said, at page 134:

> There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the government is bound to make full compensation to the owner; but the officer is not a trespasser.
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> But we are clearly of opinion, that in all of these cases, the danger must be immediate and impending; or the necessity urgent for the public service, such as will not admit of delay, and where the action of the civil authority would be too late in providing the means which the occasion calls for. It is impossible to define the particular circumstances of danger or necessity in which this power may be lawfully exercised. Every case must depend on its own circumstances. It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified.

The Chief Justice's statement in *Mitchell* v. *Harmony, supra*, was essentially dictum because the action there had been against Mitchell, the military officer who had seized the property in question, as an individual.

In 1863, however, a case was presented to this court involving essentially the same question as is now before us. *Grant* v. *United States*, 1 C. Cls. 41. The plaintiff in that case, Grant, was a government contractor furnishing commissary and quartermaster supplies to the United States forts and military posts in Arizona. Grant maintained a flour mill, dwelling houses, storehouse, shops and corrals in Tucson, Arizona. The outbreak of the Civil War found the people of that city and state in open rebellion against the United States and few Federal troops in the area. Information came that Confederate troops were entering Arizona from Texas with the evident intent of cutting off the Union troops therein. Under this state of affairs orders were given and carried out for the removal of such military stores as could be transported and the destruction of such as could not be removed, together with such private property of Grant as might be of value to the enemy. At the time the property was put to the torch the Confederate flag was actually flying in the city of Tucson and the armed and rebellious citizenry were threatening immediate attack. Grant was ousted of possession a mere half hour before the destruction. Grant brought his suit in the Court of Claims and the Government interposed the defense heard here—that the destruction was noncompensable because of the law of overruling necessity.

136 In a learned and well-considered opinion, Wilmot, J., speaking for the court, held that the destruction of Grant's property to deny it to the enemy's use was a taking for public use for which compensation must be made under the Fifth Amendment. In the course of its opinion the court cited with approval the major treatises written on the subject, *Ibid.*, p. 44:

> The damages under consideration are to be distinguished into two kinds—those done by the State itself or the sovereign, and those done by the enemy. Of the first kind, some are done deliberately and by way of precaution, as when a field, a house, or a garden, belonging to a private person, is taken for the purpose of erecting on the spot a town, a rampart, or any other piece of fortification; or where his standing corn or storehouses are destroyed to prevent their being of use to the enemy. Such damages are to be made good to the individual, who should bear only his quota of the loss (Vattel, 403).
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> We must observe this, that the king may in two ways deprive his subjects of their right, either by way of punishment or by virtue of his eminent power. But if he do so in the last way, it must be for some public advantage, and then the subject

ought to receive, if possible, a just satisfaction for the loss he suffers out of the common stock (Grotius, b. 2, ch. 14, sec. 7).

The State has an eminent right of property over the goods of the subjects, so that the State or those that represent it may make use of them, and even destroy and alienate them, not only on extreme necessity, but for the public benefit, to which we must add that the State is obliged to repair the damages suffered by any subject on that account out of the public stock (Grotius, b. 3, ch. 20, sec. 7).

The court then disposed of the argument that the state possessed the right to destroy property because of overruling necessity by pointing out that the right to destroy another's property under the pressure of overbearing necessity, and to be free of liability for the act, is an ancient natural right as between individuals. The court concluded that the rights of self-defense and of self-preservation have no connection with the state's right of eminent domain. The latter right is limited by the Constitution—the former are beyond its reach.

137 The court went on to point out that the denial of sustenance to the enemy was of nearly as great importance as providing sustenance for one's own army, and that a destruction of another's property to deny it to the enemy was as much a public use as if it had been consumed by friendly troops in battle. The dictum of Chief Justice Taney in *Mitchell* v. *Harmony*, *supra*, was cited as evidence of Supreme Court approval of this doctrine.

Wiggins v. *United States*, 3 C. Cls. 412, approved the doctrine of the *Grant* case, following it in a similar case involving the destruction of black powder belonging to an American citizen living abroad in a friendly country, to keep the powder from falling into the hands of certain Central American banditti then engaged in hostilities against the United States. The view taken by the Court of Claims was approved and applied by Judge, later Justice, Holmes in *Miller* v. *Horton*, 152 Mass. 540, 26 N. E. 100, 102. To our knowledge, no case directly involving the point in question here has been decided in the courts of the United States since the *Grant* and *Wiggins* cases. Certain cases decided in this court under the Bowman Act (13 Stat. 381) contained dicta indicating that if the question had been then presented to the court, a contrary result might have been obtained. See *Walker* v. *United States*, 34 C. Cls. 343; *Presbyterian Church* v. *United States*, 33 C. Cls. 339. At least one of these cases reached the Supreme Court, and the opinion handed down therein is today the chief reliance of the defendant. That was the case of *United States* v. *Pacific Railroad*, 120 U. S. 227. Like *Mitchell* v. *Harmony*, and, indeed, all the authorities upon the point except the *Grant* and *Wiggins* cases, the language applicable to the instant case

is dictum. And the dictum is contrary to the dictum in *Mitchell* v. *Harmony* and to the holdings of the *Grant* and *Wiggins* cases. The *Pacific Railroad* case involved the following factual situation. The Union armies, in retreat, had destroyed certain of the plaintiff railroad bridges. Later in the war, as the Union army advanced, it became a military necessity that the bridges be immediately restored to use. The railroad company was not in a financial position to rebuild at the moment, and the Government rebuilt the
138 bridges on the railroad's right-of-way. Later, the Government withheld from freight charges it owed the railroad the cost of rebuilding the bridges, claiming that the bridges were destroyed as an incident to the military campaign; that the loss to Pacific Railroad was noncompensable; and that, having built the bridges for the railroad and they having been accepted and used, an implied promise of repayment arose. The court found against the Government on the ground that the railroad was under no duty to rebuild and that no implied promise to pay grew out of the Government's construction of the bridges to further the war effort. It was held that the bridges, having been constructed upon the land of the railroad, adhered to the realty and that Pacific Railroad took title thereto without obligation to repay the construction costs. Justice Field, who delivered the opinion of the court, gratuitously went into the question of whether or not Pacific Railroad could have recovered had it been suing for the value of its destroyed bridges. It was stated that the railroad could not have recovered and that, "Whatever would embarrass or impede the advance of the enemy, as the breaking up of roads, or the burning of bridges, or would cripple and defeat him, as destroying his means of subsistence, were lawfully ordered by the commanding general. * * * The safety of the state in such cases overrides all considerations of private loss." *Ibid*, p. 234. As authority for this position, Justice Field cites Vattel, several state court cases, and the proceedings upon certain bills before Congress for the relief of citizens suffering war losses.

The citation from Vattel (*Ibid.*, p. 234) is the same as that relied upon by Wilmot, J., in the *Grant* case and includes the statement that where a citizen's standing corn or storehouses are destroyed to prevent their being of use to the enemy just compensation must be made. Of the state court cases relied upon, *Respublica* v. *Sparhawk*, 1 Dall. (Pa.) 357, involved property destroyed by the *enemy*; *Parham* v. *The Justices*, 9 Geo. (Ga.) 341, involved injunctive relief; *Taylor* v. *Nashville & Chattanooga Railroad*, 6 Coldwell (Tenn.) 646, involved the *legality* of destruction (*Cf. Mitchell* v. *Harmony*, *supra*); *Mayor* v. *Lord*, 18 Wend. (N. Y.) 126, involved the construction of a statute and the question of whether or not there had been compliance.

139 The subject matter of the bills before Congress discussed by Justice Field do not involve the issue here. The first was the case of a citizen's home burned while in possession of the enemy. Clearly, such a destruction is not compensable. *Juragua Iron Co.* v. *United States*, 212 U. S. 297. Another involved a citizen's property damaged by water from a levee breached to impede the advance of enemy artillery. This is a case of damage incidental to the actual battle. A state has never been held liable for the consequential damages that fall upon occupants of the battle area due to the clash of arms. Such losses are those of chance alone, comparable to losses sustained as the result of an unavoidable accident. Cf. *Perrin* v. *United States*, 4 C. Cls. 543. The instant case, on the other hand, deals with private property not in the hands of the enemy, yet singled out for deliberate destruction.

The third congressional action involved a bill to compensate a citizen for his house which had been taken by the enemy, recaptured, and then destroyed to deny the enemy the possibility of recapture. The question actually involved was whether or not the house had been destroyed in the course of the battle. The latter interpretation was the President's (Cong. Globe, 42nd Cong., 2d Sess. 4155 (1872)) and, although a majority of the Congress disagreed with him, the bill died under the veto.

The *Pacific Railroad* decision does not mention the *Grant* and *Wiggins* cases, but cited with approval *Mitchell* v. *Harmony*, *supra*, with no mention of its contrary dictum.

It is obvious from the language of the foregoing cases upon which the parties rely that the distinction between cases where property may be destroyed without liability because their destruction was an incident of battle, and cases where the owner of property destroyed must be compensated is somewhat less than clear cut. We are of the opinion, however, that the reasoning of the *Grant* case, where the court necessarily met the very issue involved here and considered it fully, together with Chief Justice Taney's dictum in *Mitchell* v. *Harmony*, present sounder precedents upon which to found our decision today than does the dictum of the *Pacific Railroad* case.

The United States Government was organized as a government
of limited powers under a written constitution. One of its
140 purposes was declared to be to "provide for the common defence" (*sic*). To effect this end, Congress was empowered to raise funds by a system of taxation uniform throughout the states, to maintain an army and a navy, and to declare war. Throughout the history of the Republic, it has been recognized that the Federal Government, being charged with the common defense, must call upon the citizenry of the country for common sacrifice of life and treasure in that defense. It has been a fundamental principle, however, that the burden to be met should be distributed among the people as

uniformly as practicable. The costs of war are not met alone by volunteers. A system of taxation spreads the financial burden among all the inhabitants according to their ability to pay—dissenters, slackers, and even aliens must contribute. When it becomes necessary to call upon the nation's manhood for personal service in the armed forces, that burden, which may call for the contribution of life itself, is distributed as uniformly as possible throughout the qualified men of the nation, the impartial hand of chance being employed to select specific individuals from the qualified classes. The Government does not attempt to insure its citizenry against losses due to the ravages of war inflicted by our own or enemy forces in the conduct of a campaign. But when it is determined that a specific person's property because of its nature or location is so essential to war effort that it must be taken and put to use for the good of the nation, it is our belief that the public generally should bear the cost of acquisition. Ordinarily, time is not so much of the essence but that the ordinary procedures of eminent domain under civilian control are followed and just compensation determined and awarded as a matter of course. At times, however, the emergency may be so great and the time so short that an officer of the Government is justified in impressing the property summarily into service. Because the impressment is summary and dictated by immediate necessity would not seem to make it less an exercise of eminent domain. The Constitution provides that funds for the common defense shall be raised by a uniform method of taxation; it provides also that the owner of private property taken for public use—and the common defense is a public use—shall be justly compensated.

141 It appears to us that the destruction of the Pandacan terminals was a use thereof in the common defense and that a taking of plaintiffs' property for that purpose without making compensation therefor would be as much a violation of the Constitution as would a tax directed solely at a named individual.

The nearness of the enemy and the causes necessitating the destruction, we feel, made the Army's action lawful and may have a bearing upon the question of damages (see dissenting opinion of Loring, J., in *Grant* v. *United States*, 2 C. Cls. 551), but we do not believe that it made the action other than an action of eminent domain for which plaintiff is entitled to just compensation.

We are aware that our decision, on its face, appears contra to certain principles of the common law. In *Bowditch* v. *Boston*, 101 U. S. 16, 18, it was said:

> At the common law everyone had the right to destroy real and personal property, in cases of actual necessity, to prevent the spreading of a fire, and there was no responsibility on the part of such destroyer, and no remedy for the owner. In the case of the Prerogative, 12 Rep. 13, it is said: "For the Commonwealth a man shall suffer damage, as for saving a city or

> town a house shall be plucked down if the next one be on fire; and a thing for the Commonwealth every man may do without being liable to an action." There are many other cases besides that of fire—some of them involving the destruction of life itself—where the same rule is applied. "The rights of necessity are a part of the law." *Respublica* v. *Sparhawk*, 1 Dall. 357, 362 [citing further cases].
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> The statute of Massachusetts, as far as it goes, gives as a bounty that which could not have been claimed before.

The *Bowditch* case involved, as concerned the Commonwealth of Massachusetts, a somewhat similar state of affairs as is presented here. The statute referred to provided compensation for a home owner whose house was destroyed under certain circumstances to prevent the spread of fire. It was recognized that the statute gave a right of action not cognizable at common law. In the instant case we are bound by the Fifth Amendment to the Constitution to
142 recognize plaintiffs' right under that Amendment irrespective of the English common law precedents. Justice Holmes has, indeed, expressed the thought that such cases have perhaps stood as much upon tradition as upon principle. *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 416. As pointed out in *Grant* v. *United States*, *supra*, the doctrine of absence of liability for a destruction dictated by overriding necessity may still have validity in this country as applied to individuals, but the power of the Federal Government, derived from and limited by the Constitution does not extend to the deliberate destruction of an individual's property for the common cause without the payment to the owner of just compensation.

We conclude that the Government is liable on plaintiffs' claim for just compensation for the destruction of their Pandacan terminal facilities.

CEBU CLAIM

In case No. 48319 plaintiff, Standard-Vacuum Oil Company, seeks to recover just compensation for the value of certain petroleum products destroyed on or about April 10, 1942, on the Island of Cebu to deny their use to the Japanese.

In addition to the Pandacan terminal at Manila on the Island of Luzon, Standard, Caltex, and Shell, each owned and operated terminals on the Island of Cebu. In November 1941, the Chief Quartermaster, USAFFE, arranged for the dispatch of an officer of the Quartermaster Corps to Cebu to establish and command an advance Quartermaster Depot. This Depot Commander was authorized and directed to procure supplies for USAFFE, including petroleum products, for use in the southern islands of the Philippines. He was

authorized to exercise his discretion as to the manner of procurement. USAFFE had no bulk stocks of petroleum products in or near Cebu and only a negligible amount in drums. It had been decided at USAFFE headquarters not to send supplies of petroleum products from Manila to Cebu. The only petroleum supplies in the Cebu area were those of the three oil companies.

Cebu is an island in the Philippine chain, located some 350 miles southeast of Manila.

143 On December 8, 1941, the Cebu Depot Commander, pursuant to his authorization mentioned above, called a meeting of the representatives of the three oil companies and informed them (1) that in the name of USAFFE he was taking over all their supplies of petroleum products and (2) that he was freezing the price of such products at the current Army contract rate. He stated that the oil companies would be permitted to take out a certain amount of stock from their terminals for the use of the local government on Cebu and for such civilian agencies as were essential to the Island's economy.

Within a few days after December 8 the Depot Commander had established complete control over the oil companies' terminals and had stationed military patrols thereon. He issued an order that no petroleum products could be withdrawn without approval by him or his authorized representative. Work was begun on the packaging of petroleum products in tins or drums and the removal of such products for use or for dispersal to warehouses and supply dumps for protection against possible enemy bombing.

Records were maintained of the amounts of petroleum stocks removed and the amounts on hand at the terminals. Petroleum products released to civilians or for civilian purposes were recorded as stock credits against the amount initially taken by and for the Army under the above-mentioned requisition. The oil companies were permitted to charge for the amount so released at prices prevailing for local civilian use.

On April 10, 1942, the oil companies' terminals and the petroleum products remaining in them were destroyed by order of the Depot Commander, pursuant to a demolition plan, to prevent the facilities and supplies from falling into the hands of the enemy. Japanese forces were then in the harbor and began their landings on Cebu within hours after the demolition.

Defendant has paid Standard for the petroleum products removed from Standard's Opon terminal for use or dispersal by the Army, but has refused to pay for the petroleum products which remained in the terminal and were destroyed with it on April 10, 1942.[24]

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[24] Standard's Cebu installation, known as the Opon terminal, included oil storage tanks, pipe lines, pumping equipment, dock facilities, warehouses, canmaking machinery, containers, and supplies

144 The products so remaining and so destroyed had been on hand on December 8, 1941, at the Opon terminal when the Army Depot Commander requisitioned all of Standard's petroleum products in the name of USAFFE.

It is the Government's contention that there was no taking of Standard's Cebu petroleum products on December 8, 1941, and that the action of the Depot Commander amounted merely to the establishment of a priority system for Standard's petroleum products. Accordingly, the Government concludes that if there was any taking at all it was a taking on April 10, 1942, for the sole purpose of destruction in the same manner that the Government took the Pandacan facilities on December 27, 1941.

Unlike the somewhat confused situation on Pandacan in December of 1941 relative to the authority of Quartermaster officials to requisition private property, the Quartermaster Corps official at Cebu was given authority in November of 1941 to procure supplies for USAFFE, including petroleum products, in any manner he found expedient. On December 8 the Depot Commander actually requisitioned these products. These facts are found by the Commissioner in Findings 37 and 38 and were not excepted to by defendant. The Depot Commander's actions permitting the oil companies to take out a certain amount of their stock for the use of the local government and their civilian agencies, subject to the approval of the Depot Commander, were not inconsistent with an act of taking or requisition. As of December 8, 1941, when the Army took title to the petroleum products in Standard's Opon terminal, it did not take them for destruction. It took them and used them for approximately four months. The products which were destroyed by the Army on April 10, 1942, had been in existence and in the Opon terminal on December 8, 1941, the date of taking.

145 We conclude that the Depot Commander, with full authority to do so, took Standard's petroleum products for the United States on December 8, 1941, not for destruction, but for use, and Standard is clearly entitled to just compensation for its products so taken.

Shell Contract Claim

On or about April 3, 1942, Shell sold and delivered to defendant at Cebu, for use on United States Navy submarines, 131.44 metric tons of Diesel fuel oil, for which defendant promised and agreed to pay the sum of $3,943.20. The parties have agreed that Shell

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of petroleum products. Only the supplies of petroleum products are in issue in Standard's Third Amended Petition. Shell and Caltex have not made any claim with respect to their Cebu properties in this proceeding.

(case No. 48265) is entitled to judgment in the sum of $3,943.20 and judgment for this amount will be entered in favor of Shell.

Caltex, Standard, and Shell are entitled to recover for the taking of their terminal facilities on Pandacan, and Standard is entitled to recover for the taking of its petroleum products on Cebu, the exact amounts being reserved for further proceedings under Rule 38 (c).

It is so ordered.

MADDEN, *Judge*, and LITTLETON, *Judge*, concur.

JONES, *Chief Judge*, dissenting in part:

There are times when age-old, time-honored principles of law seem to meet head on in hopeless conflict.

It is written that private property may not be taken for public use without just compensation.

On the other hand it is well recognized that property destroyed in actual battle by either side does not call for compensation. It is held that all property and human rights may be the victim of battle conditions. If the battle is lost all may be lost.

Between the application of these two recognized principles is a twilight zone the boundaries of which are difficult to determine. The differences are factual rather than fundamental.

In this uncertain zone that cannot be measured by a mathematical yardstick the facts of this case fall.

146 Were plaintiffs' permanent installations taken for public use or was the destruction the inevitable result of substantial battle conditions?

The defendant has seen fit to admit that the vehicles, the gasoline and movable articles were taken and has paid for them or admitted liability, but insists that the buildings and permanent fixtures fall in a different classification.

In *United States v. Pacific Railroad*, 120 U. S. 227, Mr. Justice Field gave extended consideration to the question now before this court. That case arose out of the destruction of railroad bridges by Federal armies during the Civil War; the bridges were destroyed to impede the advance of the enemy. Later, again in response to military necessity, the bridges were rebuilt by the United States. The United States sought to charge the railroad for the cost of rebuilding by withholding that amount of money due the railroad for transporting passengers and freight. The railroad sued for the full amount of the transportation charges. The Court decided that it was entitled to recover that amount. Recovery, however, was not based on the Fifth Amendment. The destruction created no cause of action in the railroad; neither did the rebuilding create a cause of action in the United States; both were dictated by mili-

tary necessity. Where the parties were left by the fortunes of war, there were they left by the Supreme Court.

At page 239:

> While the Government cannot be charged for injuries to, or destruction of, private property caused by military operations of armies in the field, or measures taken for their safety or efficiency, the converse of the doctrine is equally true, that private parties cannot be charged for works constructed on their lands by the government to further the operations of its armies.

The *Pacific Railroad* opinion was a careful and deliberate attempt to sum up the legal consequences of destruction of private property pursuant to the dictates of military necessity. Mr. Justice Field's discussion of whether the railroad could have recovered in an action for compensation for the destruction of the bridges was not strictly necessary to disposition of the issue in the case. But it cannot be dismissed as merely gratuitous. As he viewed the case, a
147 proposition and its converse were both involved and both had to be discussed. If not decisive of the issue now before us, his discussion is at least strongly persuasive. It has persuaded me that the demolition of the Pandacan facilities in World War II was, like the destruction of the railroad bridges in the Civil War, a destruction of private property "during war, by the operations of armies in the field, or by measures necessary for their safety and efficiency * * *." *Ibid.* If the railroad bridges were not "taken for public use", then neither were the oil terminal facilities at Pandacan. Admittedly, the question now before us was not as squarely presented in *Pacific Railroad* as in *Grant* v. *United States*, 1 C. Cls. 41. But the Supreme Court in *Pacific Railroad* was not unaware of the *Grant case*. That case as well as *Wiggins* v. *United States*, 3 C. Cls. 412, had been cited in the railroad's brief to the Supreme Court. These early Court of Claims cases did not sway the Supreme Court in 1887; I do not believe they should sway us now.

The majority has stated:

> The Government does not attempt to insure its citizenry from losses due to the ravages of war inflicted by our own or enemy forces in the conduct of a campaign. But when it is determined that a specific person's property because of its nature or location is so essential to war effort that it must be taken and put to use for the good of the nation, it is our belief that the public generally should bear the cost of acquisition.

With that statement I agree. It is with its application that I quarrel. I think it has been applied here in a most unrealistic way. I

think we have here not a case of taking and putting to use of property but rather a case of property destroyed in the conduct of a campaign.

While controls were thrown around the property in question on December 12, 1941, the actual notice of taking was not given until December 28, and it was then made clear that it would be destroyed. At that time the Japanese were at the outskirts of the city of Manila. There was no hope of saving the property. If the city were further defended, the property would undoubtedly be destroyed. If it fell into the hands of the Japanese it would certainly be destroyed before they gave it up. In fact, prac-
148 tically all Manila, residential and otherwise, was destroyed in the process of retaking three years later. Any possible value to the plaintiffs was gone whichever horn of the dilemma is taken.

The situation was hopeless from a military viewpoint and the army was withdrawn to Corregidor. The property was so near to the battle zone border as to be for all practical purposes within its flaming presence if not actually in it.

The Pandacan installations were demolished almost at the very moment before retreat. The demolition was a defensive action, and an important one. As such, it was inextricably a part of the tragic battle then taking place on the island of Luzon. I do not know how to disassociate that action from the pattern of the battle. I think an appreciation of the realties of the situation requires us to hold that plaintiffs' properties were destroyed in the course of that battle.

The demolition occurred on December 31, 1941. By January 2, 1942, Manila was under Japanese control. Had the oil terminal facilities fallen intact to the enemy and thereafter been destroyed by United States forces, by bombing, shelling, or other military action, admittedly plaintiffs would have no claim for compensation. Nor would they have a claim for compensation if the enemy had destroyed the property. Of course, had we waited until Manila fell to attempt to destroy the installations, it is not likely that the destruction would have been as effective. Our forces chose the surer mode and time of destruction. The deliberateness of this choice, the fact that plaintiffs' properties were singled out for destruction, seems to have influenced the majority's conclusion that the destruction was a Fifth Amendment taking. I think, however, that it only emphasizes the military nature of the destruction.

This court has been zealous in upholding the force of the eminent domain provision of the Fifth Amendment. We have not been unmindful of the principle that the Amendment is not suspended in time of war, and I do not propose that we should be. However, a scrupulous regard for the Amendment does not require us to ignore

149-150 the realities; it does not require us to say that property destroyed by military action was "taken for public use." I think that the loss for which compensation is sought here, considered in its context of time and place, must be regarded in law as what it was in fact—a loss incident to battle, a loss in the words of the majority's opinion, "inflicted by our own or enemy forces in the conduct of a campaign."

The law is based on reason. It is based on human experience. It is the result of centuries of effort on the part of the brightest minds, both legislative and judicial, to secure rules of action that will assure justice in disputes between individuals as well as between citizen and government.

Applying the rule to a very difficult situation we are unable to find within the range of reason any just ground for allowing compensation for the permanent installations. It was one of the darkest periods of World War II. The Japanese advance at that time seemed irresistible. Shells were bursting in the city. Within a matter of hours everything would have been in the hands of the enemy and our outnumbered army captured or destroyed, had it not been withdrawn to Corregidor. I can reach no other conclusion than that the destruction was due to battle conditions.

I dissent from the decision that plaintiffs' properties were taken for public use within the meaning of the Fifth Amendment.

I would allow the Shell Company of Philippine Islands, Ltd., to recover the sum of $3,943.20, for products sold and delivered to defendant at Cebu, and which have not been paid for. I would dismiss the other claims of each of the plaintiffs.

Judge Whitaker joins in the foregoing dissenting opinion.

151-152 JUDGMENT OF THE COURT—November 6, 1951

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes that as a matter of law the plaintiff, the Shell Company of Philippine Islands, Limited, is entitled to recover, and it is therefore adjudged and ordered that plaintiff recover of and from the United States three thousand nine hundred forty-three dollars and twenty cents ($3,943.20).

The court further concludes that as a matter of law the plaintiffs, Caltex (Philippines), Inc., Standard-Vacuum Oil Company, and The Shell Company of Philippine Islands Limited, are entitled to recover on their Pandacan claims, and plaintiff Standard-Vacuum Oil Company is entitled to recover on its Cebu claim, the exact amounts being reserved for further proceedings under Rule 38 (c).

153-155 Clerk's Certificate to foregoing transcript omitted in printing.

156 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. —

UNITED STATES, PETITIONER

vs.

CALTEX (PHILIPPINES), INC.

UNITED STATES, PETITIONER

vs.

THE SHELL COMPANY OF PHILIPPINE ISLANDS, LTD.

UNITED STATES, PETITIONER

vs.

STANDARD-VACUUM OIL CO.

ORDER

Upon consideration of the application of counsel for the petitioner,
It is ordered that the time for filing petition for writ of certiorari in the above-entitled cases be, and the same is hereby, extended to and including February 25, 1952.

FRED M. VINSON,
Chief Justice of the United States.

Dated this 29 day of January, 1952.

157 IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 610

THE UNITED STATES

v.

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED AND STANDARD-VACUUM OIL COMPANY

STIPULATION AS TO PRINTING OF RECORD

Subject to this Court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that for the purposes of petitioning for a writ of certiorari, the

printed record shall consist of the second amended petition of the Standard-Vacuum Oil Company and the answer of the United States to such petition, the amended petition of The Shell Company of Philippine Islands Limited and the answer of the United States to such petition, the petition of Caltex (Philippines), Inc. (omitting Exhibits A and A1 to such petition) and the answer of the United States to such petition, the findings of fact, conclusions of law, judgment and opinion of the Court of Claims, the dissenting opinion of Jones, Ch. J., and Whitaker, J., and the docket entries of the Court of Claims subsequent thereto.

It is further stipulated and agreed that the parties hereto may refer to the unprinted portions of the entire record which is
158 being filed with this Court but which are not included in the proposed printed record herein.

It is further stipulated and agreed that in the event the Government's petition herein is granted and a writ of certiorari issued, the transcript of record certified to this Court by the Court of Claims will then be printed unless such printing or any part thereof shall have been dispensed with by stipulation of the parties or order of this Court.

PHILIP B. PERLMAN,
Solicitor General.

CRAVATH, SWAINE & MOORE,
Counsel for Respondent Standard-Vacuum Oil Company and The Shell Company of Philippine Islands Limited.

LEO T. KISSAM,
Counsel for Respondent Caltex (Philippines), Inc.

March 25, 1952.

☆ U. S. GOVERNMENT PRINTING OFFICE 1952 958907 ——— 901

Supreme Court of the United States

OCTOBER TERM, 1951

No. 610

THE UNITED STATES, PETITIONER

vs.

CALTEX (PHILIPPINES), INCORPORATED, THE SHELL COMPANY OF THE PHILIPPINE ISLANDS, LIMITED, ET AL.

Order allowing certiorari

Filed May 26, 1952

The petition herein for a writ of certiorari to the United States Court of Claims is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 16

LIBRARY
SUPREME COURT, U.S.

THE UNITED STATES, PETITIONER,

VS.

CALTEX (PHILIPPINES), INCORPORATED, THE SHELL COMPANY OF PHILIPPINE ISLANDS, LIMITED AND STANDARD-VACUUM OIL CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED FEBRUARY 23, 1952

CERTIORARI GRANTED MAY 26, 1952

VOLUME II

Pages 1-311

INDEX

	PAGE
Other parts of record from Court of Claims designated for printing:	
Caption	1
Testimony of Charles Chisholm Drake	1
Testimony of Michael A. Quinn	48
Testimony of Mary Alice Clements	57
Testimony of John N. Shanks	79
Testimony of Joseph E. Kramer	83
Testimony of Otto Harwood	100
Testimony of Lucian Loring Rocke	118
Testimony of William C. Ramme	167
Testimony of Stephen Crawfurd	179
Testimony of James Franklin Perrine	193
Testimony of Charles Chisholm Drake	208
Testimony of Barbara E. Root	209
Testimony of Hugh J. Casey	224
Testimony of Richard Jacklin Marshall	283
Plaintiffs' Joint Exhibit 3. Letter from Hugh J. Casey to Asiatic Petroleum Co., December 25, 1941	293
Plaintiffs' Joint Exhibits 9, 10, 11 and 12. Correspondence among Messrs. Cravath, Swaine & Moore, Kendall M. Barnes, and Leo T. Kissam, relating to the Orange Plan and the production of subsidiary plans referred to in that plan	294
Defendant's Exhibit 1. Release given by the Government to Caltex (Philippines), Inc., relating to Pandacan stocks	301
Defendant's Joint Exhibit 5. Orange Plan—extracts from	302
Stipulation as to printing record	309

Testimony

IN THE

UNITED STATES COURT OF CLAIMS

Docket No. 48324

CALTEX (PHILIPPINES),, INC.,

Plaintiff,

—against—

UNITED STATES OF AMERICA,

Defendant.

* * * * *

Before:

HON. W. NEY EVANS,

Commissioner.

* * * * *

CHARLES CHISHOLM DRAKE, residing at 7035 Wilson Lane, Bethesda, Maryland, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Kissam:

Q1. What is your Army identification number? A. O-3415.

Q2. At present, are you in active or inactive service? A. I am retired, inactive status.

Q3. In the year 1941—

* * * * *

By Mr. Kissam:

Q21. General, in 1941 were you on active status with the United States Army? A. I was.

Q22. Will you state where you were and what your duty assignment was, for example, in the month of July, 1941? A. In July, 1941, I was Quartermaster of the Philippine Department, on the staff of General George Grunert. On July 28th, 1941, General MacArthur was given

a new command, known as United States Armed Forces in the Far East. I was chosen as a member of his staff, as Chief Quartermaster of USAFFE.

Q23. Where were your headquarters? A. On July 28th, my office was located at the headquarters of USAFFE, No. 1, Victoria, Walled City of Manila.

Q24. Did you continue in the same duty assignment for quite sometime after July 28th, 1941? A. I continued on that duty until I was captured on Corregidor, May 6th, 1942.

Q25. What were your principal duties subsequent to July 28th, 1941? A. My principal duties as a Chief Quartermaster were to supervise and control the procurement, storage and distribution of Quartermaster Corps supplies.

Q26. Am I correct in assuming that included among the supplies would be petroleum products of all kinds?
15 A. Petroleum products are a Quartermaster Corps supply.

Q27. In July, 1941, were you familiar with such stocks, if any, as the Army had of petroleum supplies in the Philippine Islands? A. Yes, I was.

Q28. Will you state, generally, what supplies the Army had—when I say "supplies", I am reserving it exclusively for petroleum supplies—in the month of July, 1941, on the Philippine Islands?

Mr. Barnes: I object to this as being entirely immaterial as to whether or not there was a taking in December of that year.

The Commissioner: May I have the question read?

(Question read).

The Commissioner: Objection overruled.

Mr. Barnes: Exception.

Q29. Will you answer the question, General? A. In July, 1941, the Army had no stocks of petroleum products, as we might call a war reserve. All of our petroleum products at that time were obtained from the commercial oil companies, on contract, on a day by day call or delivery to the different Army stations throughout the Philippines.

Q30. There came a time, did there not, when cer-
16 tain limited reserves of fuel arrived by boat from the United States; was that subsequent to July, 1941? A. That matter which you refer to—those reserves—as I remember it, they came in that time. They were requisitioned ahead of that period, but came in the latter part

of July or the first of August, I don't remember exactly the date.

The Commissioner: May I interrupt here? I have an impression that the word "requisition" may mean one thing in this court and another thing in the Army. As part of the pleadings of this case it is alleged that the United States requisitioned this property, in the sense that it took it. In speaking of this petroleum delivery, when you say it was "requisitioned", do you mean it was taken from a private owner or it was on order by the Army?

The Witness: What I did was this—

Mr. Kissam: May I interrupt there? I think the General is being confused.

The question addressed to you, General, you used the word "requisitioned" from the States—and I quite agree with the Commissioner.

I construe that testimony to mean he is using it in the Army sense, that he ordered the gasoline from the United States. The reason I took the liberty of interrupting
17 is, naturally, I have gone over the facts with the General—

The Commissioner: It will be made clear in subsequent testimony. Proceed.

The Witness: The reason for that was that in accordance with our defense plans, the defense supply plans for the Philippines, in case of an emergency or invasion we had no way of distributing gasoline and oil or petroleum products to the combat troops. We lacked the facilities. By that I mean tank trucks, tank cars and the actual delivery to troops in the field. So I requisitioned or put in a request to the War Department for enough steel drums, fifty-five gallon steel drums, to set up a reserve in the Philippines; and these drums could hold approximately one million gallons of gasoline.

The War Department approved this requisition and the drums arrived, and I found that, when they arrived, they had been filled with gasoline in the States, United States, which we had not put in for at that time.

By Mr. Kissam:

Q31. General, I want to be certain we understand this: Sometime prior to July, 1941, you requisitioned—and I use the word "requisition" in an Army sense—what
18 amounted to approximately one million gallons of gasoline, is that right? Or, rather, you requisitioned

the containers and the gasoline, constituting some one million gallons, came in the containers? A. That is right.

Q32. So sometime around July, or a little thereafter, you at least had under Army control this one million gallons of gasoline, did you not? A. That is right.

Q33. Incidentally, where was that gasoline kept? A. We assigned it, in accordance with our plans, to the Defense Reserve and stored it at four different places on the Island of Luzon. Around 300,000 gallons was stored at McKinley, 300,000 gallons at Stotsenberg and 300,000 gallons were stored as a Department reserve, first, in Manila and later moved to Bataan Peninsular. The remaining gasoline was sent over to Corregidor as the war reserve for that garrison. That is an island in Manila Bay.

Q34. Apart from this one million gallons of gasoline that you just referred to, did the Army have any other reserve of fuel supplies that you know of? A. No, except what they had in the tanks at the different stations, purely service tanks, like a service station supply. We had no storage whatsoever.

19 Q35. As to the fuel requirements of the Army in July, 1941, is it a fact that they were on a day by day basis, being supplied by the commercial oil companies who were doing business in the Philippine Islands? A. That is right, on call by the post quartermasters.

Q36. In July, 1941, to your knowledge, was there in existence a so-called War Plan for the defense of the Philippine Islands? A. There was.

Q37. Were you familiar with that plan? A. I was.

Q38. Did the plan contemplate use of gasoline and other petroleum products? A. Yes. We had a section in the plan which we called the gasoline supply plan.

Q39. May I ask you, without going into the details of the plan, where, under the plan, was the source of supply of the petroleum requirements of the War Plan?

Mr. Barnes: I object to this, your Honor, without at least some showing that the War Plan that General Drake is talking about was the one subsequently followed.

The Commissioner: Objection overruled.

Mr. Barnes: Exception.

20 A. The source of the supply, according to the plan, would come from the large storage reserves—rather, the storage plants in the Philippines belonging to the commercial oil companies.

Q40. Under the plan, as it existed in 1941, can you tell

me whether or not a defense for a particular period of the Philippine Islands was contemplated? A. Yes, there was a six month period from what is known as "M" Day, which is the first day of the emergency.

Q41. Under the plan, then, the Army, in carrying out its plan of defense, intended to utilize the fuel supplies on the Islands of the Philippines belonging to the commercial oil companies; is that correct? A. That is right.

Q42. From what you say, other than this one million gallons of gasoline, there were no other sources of petroleum supplies in the Philippines; is that correct? A. That is right—none intended.

Q43. Did there come a time when the plan that you knew about in July, 1941, was changed? I am only asking now with respect to the time of change. A. The plan which we had in effect at that time, which came out in April of 1941, was never changed. It remained in
21 effect, and certain parts of it General MacArthur ruled would not be used. But the plan as it existed was followed out by our personnel in carrying out their operations.

Q44. Prior to July 28th, 1941, what was your duty assignment? A. My duty assignment was Department Quartermaster, Philippine Department.

Q45. Were your duties substantially the same for some time prior to July 28th, 1941, as they were subsequently, with the exception that your headquarters was on a different basis? A. That is right, continued on in the same duties, except as a higher headquarters.

Q46. Sometime prior to June or July, 1941, did you have a meeting with representatives of the various oil companies who were doing business in the Philippines?

Mr. Barnes: I object again, your Honor, as to what transpired in June or July, 1941. I can see no materiality whatsoever to the question of taking in December.

The Commissioner: What is the purpose of this testimony, Mr. Kissam?

Mr. Kissam: I want to establish that the Government, acting through the Army, at all times anticipated
22 the use of these companies' products and that when the war clouds began to gather, long before the actual taking, there was this meeting at which the oil companies were acquainted with the Army's plan, and later there was a subsequent meeting. But the meeting I am now attempting to develop took place prior to July, 1941, and

it was a disclosure on the part of the Government, acting through the Army, of its intention—what it intended to do with the properties of these oil companies, of which this plaintiff-claimant is one.

Mr. Barnes: I would like to point out in that connection that the question of products, which Mr. Kissam referred to in his statement, has been taken out of this case entirely by payment to the oil company, to the plaintiff, for the oil and gasoline products which were taken. The only question involved now is the question as to whether or not the plant was taken and what is the just compensation for that plant. I do not see why the acquaintance of the oil companies with the use of their products has any materiality on the question as to whether, six or seven months later, there was a taking of their plant.

The Commissioner: Objection overruled.

23 Mr. Barnes: Exception.

(Question read).

A. Yes, we called a conference or, rather, I called a conference in which certain members of my staff, responsible for supply, and myself met with the representatives of the oil companies in Manila. The reason for this was that in our plan we contemplated such a conference. At that time we discussed the plan for the first time with the representatives of these oil companies. They were not familiar with just exactly what we were going to do. An understanding was reached at that time that in the use of the petroleum products of the oil companies—

Mr. Barnes: I object to any statement of understanding. I think the witness should state what was said at the meeting.

The Commissioner: Objection sustained.

Q47. General, will you just try to state what took place at the meeting, because objection is made, when you use the word "understanding", you are giving your conclusion about it. We want what you recollect about it, what took place, what you said or what any other officer said while you were present. Try not to use the word "understanding". A. As I stated, I called a conference or

24 a meeting with the oil companies with me and members of my staff, to discuss this plan. The time was given and the place was given by me. The representatives came in and we sat around the table, and I outlined to them the plan which the Army had at that time for the

use of the petroleum products of these companies and their facilities.

After giving a brief outline of the plan in that respect, my executive officer, Kalakuka, then went into the details of the plan.

Q48. That is Colonel Kalakuka? A. Colonel Theodore Kalakuka.

Mr. Barnes: Wasn't he a major at that time?

The Witness: Yes. He was given his war rank later.

By Mr. Kissam:

Q49. Incidentally, to account for the Colonel's absence, he was killed later, after the invasion, was he not? A. Major Kalakuka later became, during the war, a lieutenant-colonel and was detailed by General Wainwright to go to the northern part of Luzon and make every effort he could to round up and bring in the American forces in that area.

Q50. I do not want to interrupt you, I just want to establish the fact of his unavailability. He is dead, isn't he? A. He is dead, yes.

Q51. At this meeting, did you make any arrangements with the oil companies to receive periodic reports which would show not only their petroleum stocks on hand but would also show the amount of storage space which the oil companies had available? A. Yes.

Q52. Do you happen to remember the name of the representative of the Caltex Company who was present at the meeting? A. I don't remember his name.

Q53. Is it your testimony, however, that you called representatives of all of the oil companies? A. That is right.

Q54. To your knowledge, one of the companies with facilities at Pandacan was the Caltex (Philippines), Inc., was it not? A. It was.

Q55. Did you invite a representative of that company to attend your meeting? A. We did.

Q56. But you do not recollect the name of the man who came? A. I don't remember his name.

Q57. After that meeting, did you thereafter and with regularity obtain reports which showed not only the fuel on hand but the storage facilities of the Caltex Company? A. Yes.

Q58. After you had this meeting, which was prior to July, 1941, which I will call the first meeting with the oil

companies, did you make any report of that meeting to higher headquarters? A. Yes, sir, I was required to do that in my daily operations report.

Q59. What was the higher headquarters to whom the report was made? A. The report was approved; there was no further discussion on it and we accepted that as authorized by the Department Commander.

Q60. I am not getting at that, General. I am attempting to establish whether or not there is in existence today any written report of the meeting. I understood you to say you made a report of the meeting to higher headquarters; is that right? A. Yes.

Q61. Where is that report now? A. To the best of my knowledge and belief it has been destroyed, because
27 we kept no records.

Q62. Were all your headquarters' records destroyed at the time Manila was evacuated? A. We destroyed all the records we had in our office, because we could not take them with us to Corregidor.

Q63. The war broke out on December 8th, 1941, which was December 7th in the United States; is that correct? A. That is correct.

Q64. After December 8th, 1941, did you again call a meeting of the oil companies at the direction of higher headquarters? A. I did.

Q65. First of all, who directed you to call a meeting? A. I was directed by General MacArthur, through his Chief of Staff, General Richard Sutherland.

Q66. Did you personally call such a meeting? A. I personally called that meeting.

Q67. Did you invite representatives of all of the major oil companies in the Philippines, which included Caltex, this claimant, to attend the meeting? A. That is right.

Q68. Will you tell me what took place at the meeting, what you said and what other people said? A. I
28 don't remember the name of the building in which we met, but we met in the office of one of the oil companies in Manila. It was just beyond the James Bridge on the Esculta. That was designated by me as the most available place at the time, as we were scattered around Manila and all over the city, with our different officers —as the most simple place to have a meeting.

The meeting was called and the representatives of the oil companies were there. I was there with my staff, certain staff officers who were responsible for carrying out the operations of supply.

Q69. Will you stop there and tell me the names of the officers whom you recollect? A. The officers that were with me at that meeting were Colonel Bersina, now dead, who replaced me as Department Quartermaster.

Q70. Who else that you recollect? A. Colonel Alva McConnell, who was Commanding Officer of the Philippine Quartermaster Depot and was charged with the actual procurement of supplies for the Army, quartermaster's supplies for the Army.

Q71. Did Colonel McConnell survive? A. He is
29 dead.

Q72. Will you tell me what took place at the meeting?

Mr. Barnes: May I ask whether those were the only representatives of his staff present?

Q73. Were there any other members of your staff present? A. I believe, but I am not certain, that Major Kalakuka was there.

Q74. Let us put it this way: Other than yourself, to your best recollection, are there any officers who were at that meeting who are alive today? A. No, they are all dead.

Q75. You are the only survivor? A. Yes.

Q76. Will you state what took place at the meeting? A. We immediately discussed how to put into operation the plan which we had discussed with the oil representatives in our conference of April. I had been instructed prior to the meeting to take control—that is, for the Army to take control of the operation of supply and distribution of gasoline and oil and petroleum products from the large storage tanks of the oil companies to the troops, and to use their facilities—facilities and personnel and trucks and storage tanks, or whatever belonged to the oil companies at that time. The oil representatives were keen for it and came through, as you might say, 100 per cent.
30 They said they would turn over to us on call all the gasoline which was then in storage under their ownership.

Q77. What was said, if anything, about the facilities at Pandacan—the storage places, the trucks, all the terminal facilities of the various companies in Pandacan? A. We would use the terminal facilities in Pandacan, which included personnel of the oil companies there, whatever trucks, tank trucks or tank trailers, the use of the Manila Railroad, tank cars on the railroads, to move the gasoline

and oil as needed to replenish what we called distributing centers which were located throughout the Island of Luzon, where certain storage would be set up. There were six of them altogether.

At these distributing centers we were to place Army personnel, under Colonel McConnell's command, to check and supervise with the personnel of the oil companies the temporary storage of the gasoline in those distributing centers and, later, to check out from those distributing centers the gasoline and oil which the Army was going to use in its different service stations throughout the Island of Luzon, where the actual supply to the Army would take place.

Q78. General, what is Pandacan? A. A section of
31 Manila on the Pasig River, in the southerly direction; I would say perhaps four miles from the center of the city.

Q79. It is the place where all of the oil companies, not just Caltex but all of the oil companies doing business in Manila, have their terminal facilities; isn't that correct? A. Yes.

Q80. They are all grouped together in the same general area? A. Yes.

Q81. When you refer to Pandacan you refer to the whole area, which includes not only the property of Caltex but the other companies in that area; is that correct? A. Yes.

Q82. Let us take up one thing at a time. You said something about distributing centers. What do you mean by that? A. In carrying out the plan, as ordered by the Department Commander, the idea of gasoline distribution was to move from a large central storage area to points nearer the troops, where gasoline could be temporarily stored in fairly large storage tanks.

Q83. Let us just take that. The source of the supply of gasoline was Pandacan; is that right? A. Yes.

32 Q84. Were distributing centers actually set up after you had the meeting? A. Yes.

Q85. Will you tell me where the centers were, as you best recollect them? A. We established three in the northern central part of Luzon, behind the troops, one at Tarlac, one at Guimba, and one at Cabanatuan.

Q86. Where else? A. Farther south, to take care of the supply of the troops that are operating on the China Sea side of the Zambales Mountains, we established another distributing center at San Fernando—Pampanga.

Q87. Where else? A. To the south of Manila, in the Pampanga area, at San Pablo.

Q88. Where else? A. The sixth one was for distribution within the area between San Fernando and San Pablo; we operated directly out of the Pandacan area for distribution.

Q89. In order to establish these centers, did you utilize the facilities—and by "facilities" I mean the trucks,
33 tanks and equipment of the various oil companies at Pandacan? A. Yes, we had to because there were no others to use. That is, the Army had practically none to meet the large demand of gasoline to supply our trucks and automotive vehicles.

Q90. Did you have anything to do with certain service stations which were maintained by the commercial oil companies? A. Yes, the owners of the service stations operated them for us, using their facilities, and Colonel McConnell was required to have a representative of the Army there to check all gasoline and oil actually issued.

Q91. About how many service stations did you utilize? A. We used around thirty service stations.

Q92. At these service stations, did the civilian personnel keep on with their work, under your supervision? A. Yes, they were supposed to. That was the understanding and I believe they did. I didn't have time to check all these things as I was very busy in my own office at the time. But it was the arrangement made prior to the war. We surveyed each service station and informed the owner that the Government would operate out of that station for the supply of gasoline and oil.

Q93. Was military personnel placed at these stations? A. Yes.

34 Q94. Addressing my question to the facilities at Pandacan, what happened there after December 12th, 1941? A. We went right into the operation of the plant as soon as possible. I had prepared a quartermaster supply memorandum for the troops, so that they would know exactly where to get their gasoline and oil when they needed it. Pandacan then supplied the distributing centers and also the service stations in the Manila area.

Q95. Did you direct the placing of military personnel at Pandacan? A. I didn't direct it, I directed Colonel McConnell to establish his personnel there.

Q96. Did you give orders to your subordinate officers to place military personnel at Pandacan? A. Yes.

Q97. Are you reasonably certain that the date of the

second meeting of the oil companies was December 12th, 1941? A. I am, yes. If I may state, it is very hard for me to remember right now, having lost all of my records, as to the actual date of any of these things; but it is approximately that. I would say it was December 12th.

Q98. After you returned to the United States, you prepared a report for the War Department, did you not?

35 A. That is right.

Q99. Am I correct in stating that the date you used when describing the second meeting was December 12th, 1941? A. That is the date.

Q100. Anyway, that is your best recollection? A. That is right.

Q101. If it was not December 12th, would you say it was certainly within a day or two before or after? A. It would be before.

Q102. After December 12th—and I am assuming that the meeting took place on that day—did the commercial oil companies have anything to do with the use and control of their facilities, except subject to approval of the Army? A. No. They were required to take instructions from the Army personnel.

Q103. In other words, after the date of the second meeting, December 12th, 1941, the Army directed the civilian personnel of the oil companies as to what they could do and what they could not do with their facilities, as well as with their products? A. They carried out their operations under Army instructions or orders.

Q104. With respect to the use of gasoline, am I

36 correct in stating that, after December 12th, no one could draw gasoline in the Philippines without Army approval; a civilian could not draw it, or anyone else, without Army approval? A. President Quezon, following the declaration of war, issued a proclamation, which was published, freezing all gasoline or petroleum products in the Philippines and authorizing its use to certain individuals and organizations, like hospitals, Fire Department, sanitary use, Government officials and so on. Civilians were not—as we know them, unless in an official capacity—were not allowed to go to any of the service stations and purchase gasoline. So that, as far as I know, there was no sale of gasoline to any civilians, other than those I mentioned in a Government capacity, after we took control.

Q105. The proclamation of which you speak, that was prior to the meeting of December 12th? A. Yes, it really caused the meeting.

Q106. In other words, the local government came in and froze gasoline, and then you had your meeting and made these arrangements; is that right? A. Yes.

Q107. General, would you say it was accurate for me to state that subsequent to your second meeting, which
37 you place on December 12th, 1941, that control of the supplies of the oil companies in the Philippines, as well as the facilities of the oil companies, was in the Army rather than in the companies after that date? A. Yes.

Mr. Barnes: I object to the form of the question.

The Commissioner: Sustained.

Mr. Barnes: I move to strike the answer.

The Commissioner: Motion allowed.

Q108. I will put it to you this way: At any time after December 12th, 1941, while you remained in Manila, to your knowledge were the oil companies given free access to their facilities and products? A. No.

Mr. Barnes: I object to that question, your Honor. The phrase "free access" seems to me to be an extremely vague one, susceptible to numerous interpretations.

The Commissioner: I think you had better break it down, Mr. Kissam. Let us see what the extent of control was.

Q109. When did you leave Manila, General? A. I left Manila, under General MacArthur's orders, on December 24th. He had transferred his headquarters from
38 Manila, prior to declaring Manila an open city, to Corregidor, where he set up his headquarters. I was ordered to move my office to Corregidor.

Q110. When did the Japanese come in? A. They came into Manila on January 1st, 1942.

Q111. At any time before Manila was evacuated, which would be sometime between the 24th of December and when the Japanese came in, to be specific, did the Army permit the oil companies to direct the use of petroleum products?

Mr. Barnes: You changed the beginning of the question, so I am not sure of the date you are talking about, Mr. Kissam.

Mr. Kissam: I am addressing all of these questions from when the second meeting took place, which the General fixed as December 12th, up to such time when the General was no longer able to observe, when he left.

Mr. Barnes: On December 24th?
Mr. Kissam: That is correct.

A. Since I moved to Corregidor, I was not in a position to supervise the distribution of—

Q112. That is not my question. You were in Manila up to December 24th. My question is: Between December 12th and December 24th, to your knowledge, did the oil companies during that period commence to direct the use of their petroleum products—in other words, sell them to whom they used—or was it still subject to the Army? A. Still subject to Army control.

Q113. Is your answer the same with respect to their terminal facilities at Pandacan? A. Yes.

Q114. I know, of course, you could not observe what happened in Manila after you went to Corregidor, but it is a fact, is it not, based on your observation, that just before the Japanese came in all of the fuel supplies and the properties were demolished by Army action; isn't that right? A. That is right.

Q115. Isn't it a fact that even from Corregidor you could observe the smoke resulting from the destruction of the petroleum products? A. You could see it very plainly.

Q116. Was there an officer designated by you, whose name you have not yet mentioned, that had anything to do with keeping statistics relating to the petroleum products in the facilities of the oil companies after the meeting of December 12th? A. After the meeting of December 12th, the procurement and distribution was given to Colonel McConnell. I know of no other officer who kept the statistics but his office. Major Carlton was the officer designated by Colonel McConnell to keep a record of the petroleum products in relation to its procurement and storage.

Q117. After you had the meeting of December 12th, did you notify all your subordinate commanding officers of what had happened at the meeting? A. No. I made my regular report, as I was always required to do, giving exactly what happened at the meeting, and sent it in to the Chief of Staff or the Deputy Chief of Staff, General Richard Marshall.

Q118. To your knowledge, were the various Division Commanders notified of the meeting? A. No.

Q119. They were not? A. Not by me.

Q120. I mean through your chain of command, not necessarily by you personally. A. They were notified, Divi-

sion Commanders were notified by the administrative order which was published by General MacArthur's Headquarters, which covered not exactly the minutes of the meeting, but actually what the Division Commanders would do in the drawing of gasoline from the service sta-
41 tions.

Q121. In other words, the administrative order of which you speak reflected the arrangements you had made at the meeting with the oil companies? A. That is right.

Q122. Who was Colonel Otto Harwood? A. Colonel Harwood was with me when I was Department Quartermaster, as my assistant for war planning. In his war planning he was required to keep records and reports on the gasoline situation, petroleum products situation in the Philippines.

Q123. He was your war plans officer? A. For procurement.

Q124. And designated as such? A. Yes.

The Commissioner: Shall we take a five minute recess?

(A short recess was taken).

The Commissioner: Let us proceed.

By Mr. Kissam:

Q125. General, you mentioned an officer named Carlton? A. Yes, he was detailed by Colonel McConnell as procurement officer for quartermaster supplies which had to
42 do with petroleum products.

Q126. Did he survive? A. No, he is dead.

Mr. Kissam: These questions that I am now going to ask relate to the other action, Action No. 3.

Q127. Was there an officer on your staff by the name of Colonel John Cook? A. Yes.

Q128. After December 12th, 1941, did you give him any directive as to a special duty assignment to take place on the Island of Cebu? A. No, I gave him no instructions at that time. When he went down there he received instructions in regard to procurement of supplies for the troops in the southern islands of the Philippines.

Q129. Did you direct him to go to Cebu? A. I asked orders to be issued to have him sent down there and he went down there in the latter part of November.

Q130. He went down there in what capacity? A. As Commanding Officer of the Cebu Quartermaster Depot.

Mr. Barnes: That was an advanced Quartermaster Depot?

The Witness: Yes.

43 By Mr. Kissam:

Q131. Did you give him any instructions as to what his duties were or how he was to accomplish his duties? A. He was to carry out the regular quartermaster duties, which had to do with procurement of supplies in that area, in necessary quartermaster requisitions and also local procurement of any supplies which he needed.

Q132. Those supplies would include gasoline products and facilities— A. Yes.

Q132. (Continuing) —relating to gasoline products? A. Yes.

Q133. Is it correct to say that he was in charge of all procurement at the advance quartermaster depot in Cebu after November, 1941? A. Yes.

Q134. General, did you in 1941 have an opportunity to observe what the facilities of the Caltex Company at its Pandacan Terminal consisted of? A. I never made an inspection of the Pandacan area to check the facilities there personally.

Q135. I do not mean a detailed inventory. For example, are you in a position to testify, from your own per-
44 sonal knowledge, that Caltex had a certain amount of automotive equipment—without describing it? A. No.

Q136. Didn't you state tank trucks and oil trucks? A. I saw oil trucks around there. I don't remember right now whom they belonged to, but all the oil companies had tank trucks which they used to deliver gasoline to the service stations.

Q137. You know they had bulkheads, docks and wharves? A. Yes.

Mr. Barnes: May I ask whether that answer is to be qualified the way the last one was—he knew all the oil companies had them or he knew that Caltex had them?

Q138. What is your answer to that? A. Yes, I will say that Caltex had gasoline trucks.

Q139. Do you know, also, that they had certain steel tanks for the storage of gasoline? A. Yes.

Q140. Did you know, also, that they had certain marine equipment? A. Yes.

Q141. Did you know, also, that they had tank cars for

the purpose of carrying gasoline—that is, tank rail-
45 road cars? A. I was under the impression that the tank cars belonged to the Manila Railroad.

Mr. Kissam: You may examine.

Cross Examination

By Mr. Barnes:

XQ142. General Drake, so that we can be clear on the meaning or the interpretation of your war plans, as you described them, the Quartermaster Corps divides the type of supplies that it procures into general classes, does it not? A. Yes.

XQ143. Those are designated by numbers—Class 1, 2, 3? A. Class 1, Class 2, Class 3 and Class 4, at that time.

XQ144. What are Class 1 supplies? A. Class 1 supplies, automatic supplies. They had to do principally with subsistence, which went out to the troops every day—food. It was practically all food.

XQ145. How were Class 1 supplies procured? A. Well, we requisitioned the United States.

XQ146. You mean you placed orders? A. Yes, in the United States, for keeping Class 1 supplies for six months in the Philippines at all times.

XQ147. Did you purchase supplies locally, too? A. We were authorized to purchase food supplies in open
46 market contracts, with the packing houses in Manila, for the supply of a number of items.

XQ148. Would that procurement be done through your office or some lower procuring office? A. The Commanding Officer of the Philippine Quartermaster Depot, Colonel McConnell, had the actual procurement of these supplies.

XQ149. That is, the Class 1 supplies? A. Yes. He initiated the requisitions and they were assigned by me, and—

XQ150. He was the contracting officer? A. Yes.

XQ151. What about Class 2 supplies, what are those? A. Class 2 supplies are equipment; clothing and equipment. The clothing, of course, which the personnel wore—the Army clothing—including everything which the man wore, and the equipment, was all the quartermaster equipment which he carried with him not including the rifle or the bayonet or what we call the ordnance supplies, the things which he fought with. He had his belt and bayonet scabbard and helmet, the regular equipment which he had to use in order to live. That would be mess equipment, and so on.

XQ152. How were those supplies procured? A.
47 They were procured mainly by requisition on the War Department, in the United States.

XQ153. Along the latter part of 1941 you began a program of local procurement in some items of clothing? A. We had to go into it. When the Philippine Army was organized under General MacArthur we had to go into local procurement, because the United States could not meet the demand which we placed on them for this equipment. So we went into the local market and made contracts for shoes, under-clothing, socks, outer garments, work clothes—everything that we could substitute for an item which the quartermaster would ship to us from the United States and which he couldn't do at the time.

XQ154. That was largely for the Philippine Army, was it? A. Practically all for the Philippine Army, as I remember.

XQ155. When was the Philippine Army organized? A. It had been organized for quite some time. I don't—that is, the army which fought, I believe, was started in 1935 on a ten-year plan, till 1945, when the Philippines were supposed to have its independence. The army was organized under General MacArthur, who was military adviser to President Quezon.

XQ156. I thought you said you started this procure-
48 ment when the Philippine Army was organized. A. What I meant was mobilized.

XQ157. What was the date of mobilization? A. They began mobilizing in, I would say, around the 1st of September, 1941.

XQ158. They were scheduled to call up units progressively for about a year? A. Progressive mobilization, first, of eleven reserve divisions, then the corps and army troops and the communications troops, which made up the noncombatant troops—like Quartermaster, Ordnance and Signal Corps. The divisions came in first, or were progressively mobilized from the 1st of September to the following April, when they were supposed to be fully mobilized.

As they were mobilized they were moved into training areas. We might call them areas not only for training but for observation, and in readiness so they could be at these particular places if anything happened in the way of emergency.

XQ159. So far as your local procurement of supplies, Class 2 supplies for the Philippine Army was concerned, who was the actual procuring officer; was that Colonel Mc-

Connell, also? A. He had to do it at first, because
49 although we had organized a setup for the Philippine Army, supply setup, it could not get into operation. So Colonel McConnell took on the additional duties of that office until it could get organized.

XQ160. What we have been talking about here today have been Class 3 supplies, oil and gasoline? A. Yes.

XQ161. How were those procured? A. In the Philippines they were procured under local contracts.

XQ162. With the exception of this so-called war reserve? A. We had no war reserve at that time.

XQ163. In June or July, in some point in there, you got the one million gallons that you referred to? A. I didn't requisition the gasoline. We were going to procure it locally.

XQ164. That had been your program right along? A. Yes.

XQ165. Was that also done through Colonel McConnell's office? A. Yes.

XQ166. What are Class 4 supplies? A. Exceptional supplies which are not—well, we might say supplies not
50 required to be used; as an item which is not daily used by the combat troops or by the troops. They are exceptional supplies, like engineer supplies, in which a project immediately develops—say a camp or station—in which they have to purchase the supplies or buy them. They buy them mostly under contract. These requirements, Class 4 supplies, had to be approved by the Commanding General and were classified as exceptional supplies.

XQ167. By the "Commanding General", you refer to General MacArthur? A. The first Commanding General was General Grunert.

XQ168. After the USAFFE was organized it would be General MacArthur? A. Yes. He was commanding a headquarters which had no procurement functions, he was also commanding the Department at the same time. So it was General MacArthur who was Department Commander and at the same time he was USAFFE Commander. The officers in the Department staff were under him just the same as his own staff.

XQ169. You say your war plans, as they existed in the middle of 1941, when USAFFE called for the procurement of gasoline and oil from the local suppliers— A. Yes.

51 XQ170. Did those war plans call for taking over the plant and facilities of the companies? A. I

wouldn't say it appeared in the plan, but the agreement—after discussing it, we found that we had not the personnel to handle it.

XQ171. What agreement do you mean? A. With the oil companies

XQ172. What you described as the first conference, in June or July? A. Yes.

XQ173. Was that before USAFFE was organized, or after? A. Before.

XQ174. You say, although it did not appear in the war plans, there was an agreement to that effect? A. Yes.

XQ175. And the agreement was what; that the United States would take title to the plants immediately on "M" Day, or what? A. That the oil companies would turn over the facilities to the Army for the operation of gasoline supplies.

XQ176. What do you mean by "facilities", their trucks and things of that type? A. Everything they had at their disposal.

52 XQ177. You said they would turn them over; the Army would operate them? A. No, the Army couldn't operate them because it hadn't the personnel. They would turn over their personnel to us to operate under our orders.

XQ178. You were still going to give the, for example, delivery tickets for the gasoline they delivered? A. Yes.

XQ179. You were just going to put—if I can paraphrase you and try to understand this—officers in there who were going to tell them to whom to make delivery and in what quantity? A. Yes.

XQ180. Through what media? A. Yes, through the transportation facilities of the oil companies.

XQ181. You would even have the right to designate what truck would make which delivery? A. You are getting down to the fine points and details of this thing, and I cannot say.

XQ182. Going back to this first conference, you said it was attended by members of your staff. Who, beside Major Kalakuka, were present at that meeting—the first

53 meeting—in June? A. Colonel Kalakuka was there, Colonel McConnell, Colonel Quinn, Colonel Kramer, Colonel Harwood; all the responsible officers interested in that particular conference were called.

XQ183. Colonels Quinn, Kramer and Harwood are still living, are they not? A. Yes.

XQ184. Do you recall the names of the representatives of any of the oil companies who were present at that first

meeting? A. I don't remember the names of any of them, no.

XQ185. Going to this second meeting, you stated you called it. Hadn't you been approached before you called it by a representative of the Asiatic Petroleum Company and it was because of his attitude, or his confusion, that you called that second meeting in December? A. No, I don't remember that; because the matter was taken up directly with me through General Sutherland's office, to assure supply for the supply, gasoline supply, on account of the freezing of the supplies by President Quezon.

XQ186. Do you recall a representative of Asiatic Petroleum whose nickname was "Red"? A. If you are
54 referring to Mr. Coleman, I remember him; but I don't remember if he was at that particular meeting or not. He came into the picture later on.

XQ187. What do you mean, "later on"? A. After we put the agreement into operation, Mr. Coleman came over to the Quartermaster Department's office and worked with the Army. He was in Colonel Bersina's office. He was go-between between the Army and the oil companies in all matters which might come up at the time where a decision had to be made.

XQ188. When you say "the Army" here, you are referring to the Quartermaster Corps, aren't you? A. Yes.

XQ189. Let me interrupt a minute to try to straighten out this organizational pattern that existed in the Philippines. You were Quartermaster in USAFFE? A. From July 28th.

XQ190. From the organization of USAFFE? A. Yes.

XQ191. How was your office divided under you; what were the principal branches, if we can call them that? A. We had a regular staff set up for personnel, administration,
supply and transportation. Those are the divisions
55 of the office.

XQ192. Your transportation was what—was that called the Army Transport Service? A. Yes, any means which the Army might use in moving supplies.

XQ193. Who was in charge of that branch? A. Colonel Kalakuka. I only had two officers under me in my office.

XQ194. At what time? A. This was after, that is, when I organized the office when I became USAFFE Quartermaster.

XQ195. Let us go through to about the 1st of December. Who was in charge of transport then? A. You mean in my office?

XQ196. Yes. A. Major Kalakuka.

XQ197. You still only had two officers? A. That is all.

XQ198. You and two officers constituted your office, is that right? A. No, we had some assistants, Philippine Army officers who came to us. We had three.

XQ199. Where were all these people that you spoke
56 of—Colonel McConnell, how did he rank organizationally, with relation to your office? A. He wasn't part of the office. He was operating a facility. The operation of facilities was always under the Department and not under USAFFE.

XQ200. Who was the Department Quartermaster? A. Colonel Bersina.

XQ201. Was he under you? A. He was under me for supervision and control. It is a staff function. I could issue him orders, in the name of the commanding general.

XQ202. What were your duties and functions as USAFFE Quartermaster, just to make plans? A. As a staff officer, I was charged with the planning for Quartermaster supply and distribution for the USAFFE. As a representative of General MacArthur. I was charged with the control and supervision of all Quartermaster facilities and operations and maintenance, and so on. I had no actual operation duties, but I had inspection duties which required me to go out and inspect these facilities to see that they were being operated in accordance with the orders which had been issued by USAFFE Headquarters, in a control capacity.

(Discussion off the record).

57 The Commissioner: We will recess until two o'clock.

(A recess was taken to 2:00 p. m.).

AFTERNOON SESSION

2:00 p. m.

CHARLES CHISHOLM DRAKE, resumed the stand and testified further, as follows:

Cross Examination (Continued)

By Mr. Barnes:

XQ203. Your duties and responsibilities, then, involved no actual procurement; is that correct? A. I didn't actually procure any supplies, I just saw that supplies were

procured, that they went to the proper places to be obtained or to the procurement source.

XQ204. You set up the types and quantities that were to be procured, as far as plans were concerned? A. That is right.

XQ205. And you established the policy as to whether they were to be procured locally or to be requisitioned from the United States, or ordered from the United States, and things of that type; was that your responsibility? A. Certain things, yes. We knew they couldn't be procured in the United States. Generally the requisitions were
58 handled by the Department and there they broke them up. When they came to me for check, and so on, we mailed them from General MacArthur's Headquarters; if they were going to the United States, we mailed them from there.

XQ206. So far as Class 3 supplies are concerned, gasoline and oil, you merely established a policy that they would be procured locally? A. Yes.

XQ207. You did not actually procure them yourself? A. I had no funds for procuring.

XQ208. That procurement would have been done through Colonel McConnell? A. Yes. The Depot Commander was always the procuring source, the Operations Procurement was in his office.

XQ209. What about the Water Transport Service, where does that enter into the organizational picture? A. That is the water transportation was more a function of the Quartermaster General for control. The superintendent of the Water Transport Service was appointed by the Quartermaster General and therefore, all matters pertaining to water transportation went through headquarters, or through USAFFE.

XQ210. When you say appointed by the Quarter-
59 master General, that would be you? A. No, the Quartermaster General in Washington.

XQ211. Who was in charge of the Transport Service in the Philippines? A. Colonel Frederick A. Ward—Colonel Frederick Ward.

XQ212. Did he have any authority to procure Class 3 supplies? A. No.

XQ213. What about the motor transport, where did that fit into the organizational picture? A. That was a Department operation matter and Colonel Quinn, who was Chief of the Motor Transport Service, operated under the Department Commander.

XQ214. That would be under Colonel Bersina? A. Yes.

XQ215. Did he have any authority to procure Class 3 supplies? A. No, not at that time.

XQ216. What do you mean by "at that time"? A. After the war went on we transferred the procurement of gasoline and supplies on Bataan—this was after we went to Bataan—we organized what is known as a Motor Transport Service, which would be under the Force Commander,
60 according to Army regulations in the field. From that you go to the Chief of the Motor Transport Service for procurement.

XQ217. But after you were on Bataan you were not doing much procuring of Class 3 supplies? A. No; if it ever came up, Colonel Quinn would have procured the necessary petroleum products. We only had, on Bataan, the gasoline in the drums that I spoke about and some which had been shipped in tankers and barges and other vessels in removing all the gasoline and oil we could from Pandacan to Bataan before the evacuation of the American forces from there.

XQ218. Colonel McConnell was in charge of Manila Quartermaster Depot—wasn't that the title of his organization? A. Yes.

XQ219. And that was part of the Department, too? A. Yes. It operated under the Department of Quartermaster.

XQ220. Colonel Harwood was in the Manila Quartermaster Depot, was he not? A. Colonel Harwood was operating out of Colonel Bersina's office, as an assistant.

XQ221. He was in the Department Quartermasters? A. Yes.

61 XQ222. Not in yours? A. Not in mine, no. He was in mine before the war.

XQ223. During what period of time was he in your office? A. All I can say, he was in my office up to the time I went up to USAFFE Headquarters.

XQ224. When you were in the Department? A. When I was Department Quartermaster. When I left the office was reorganized by Colonel Bersina, and I don't remember now just exactly what Colonel Harwood's duties were under Colonel Bersina.

XQ225. You referred to the fact that he had been a War Plan's officer, or something of that type. Are you referring to a period of time before you went up to USAFFE? A. Yes.

XQ226. You do not know what his responsibilities were

after that date? A. I wasn't definitely sure, because Colonel Bersina organized his own office.

XQ227. In any event, Colonel Harwood was not in your office as part of USAFFE? A. No.

XQ228. After you went up there? A. No, he didn't operate under me as one of my assistants.

62 XQ229. Referring to this second conference that you said took place about the 12th of December, 1941, were there any representatives of the Navy present? A. Yes, there was.

XQ230. Do you remember the name of the Navy representative? A. No, I don't.

XQ231. Was it Captain Morrell? A. Either Captain Morrell or an officer out of his office, one or the other. I am not sure now. But he was a Navy supply officer and would have anything to do with the functions of procurement for the Navy.

XQ232. Do you recall having had a conference with Lieutenant Nisen, of the Judge Advocate General's office, on October 23rd, 1945, in connection with the Philippine situation? A. No, I don't remember. I don't remember the officer.

XQ233. Considering the situation as it existed at the time of that meeting on December 12th, President Quezon had issued this proclamation, I think you called it, that froze gasoline stocks; is that right? A. Yes.

63 XQ234. That was, I assume, something that provided for special treatment of special types of users; is that correct? A. It covered all the sale of gasoline and oils to individual owners of cars and other vehicles which might not be used for a purpose other than the pursuit—to meet the emergency.

XQ235. Unless you were engaged in health or sanitation activities or in the prosecution of the war, you couldn't get gasoline; is that generally correct? A. Right.

XQ236. That proclamation would have controlled the distribution of oil, whether you had any conference with the oil companies or not, wouldn't it?

Mr. Kissam: That is objected to as being speculative.

The Commissioner: Objection sustained.

Mr. Barnes: Exception.

XQ237. When was that issued, do you know? A. You are referring to the proclamation?

XQ238. Yes. A. That was issued immediately after the

emergency—the declaration of war. I would say within a day or two, not later.

XQ239. The 9th or 10th of December, Philippine
64 time? A. As I remember, yes.

XQ240. You say you called this conference as a result of that proclamation, or because of it? A. Indirectly, it had the effect that General MacArthur wanted to then assure the Army of the supply in accordance with our plans.

XQ241. The Army was one of the excepted groups in Quezon's proclamation, was it not? A. I don't know. He had no control over that part of it. He had only control of the operations of the commonwealth and the utilities and the Fire Department and hospitals, and things like that, so that he would make no mention with regard to the Army, covering the Army end of it.

XQ242. At this conference it was agreed, I take it from what you said, that the Army would place a control officer, or something like that, at the Pandacan Terminal; is that correct? A. Yes.

XQ243. Was that the title of the man, was he— A. I don't know what his title was. He was to be in charge and carry out the instructions of Colonel McConnell and the reports that had to be made, checking of oil and gasoline going out and the distribution of it.

65 XQ244. Did he have to sign sales tickets or receipts for the oil that went out? A. He or his representative should have done that. I don't know whether it was done or not, I couldn't say.

XQ245. But your program was that sales tickets or receipts, or whatever the companies' operational requirements were, would be given for all gasoline shipped out? A. It was understood that instead of signing for all the gasoline in Pandacan, the Army would sign up and pay for the amount which it requisitioned—or took, rather, for its use, only.

XQ246. As a truckload or a carload or anything else went out, that was scaled some way and a sales ticket or receipt made up? A. A tally slip or something would come in and be made of record, so that the officer in charge knew exactly how much oil and gasoline was going out each day and where it was going, in accordance with, evidently, a plan on requirements to the distribution centers and also to the service stations.

XQ247. In other words, you signed for the gasoline as it left the companies' facilities? A. That was the under-

standing, those were the instructions which Colonel McConnell got from me after the conference.

66 XQ248. The program was that you were to pay for the gasoline covered by these tally tickets, or whatever it was? A. We hoped there would be a record so that the Government could pay for it.

XQ249. That was your policy at the time; you hoped you would be able to pay for it? A. Yes.

XQ250. Events moved a little bit too fast for things to go through for payment? A. First we did pretty well, and then it was just too much for us.

XQ251. Was there any discussion at that conference of the possibility of the Army taking over at that time the entire stocks that were in the oil companies' plants? A. If you refer to signing a requisition, or putting in a requisition for all the gasoline and oil in Pandacan, no. It was the understanding at that meeting that we would not sign for any gasoline or oil that was not used by the Army.

XQ252. Do you recall whether any kind of a letter was written to the oil companies evidencing this arrangement which was made at this meeting? A. I don't remember that any letter was issued by Headquarters on that.

67 XQ253. If there had been a letter, would it have gone through your office or through Colonel McConnell's office? A. No, it would originate in our office and then would be sent to the oil companies by our Adjutant General.

XQ254. General Drake, do you recall making a statement about that meeting that apparently the oil companies wanted to retain title to the oil, believing that Army control would be relaxed later and sales be permitted to other users under the ration program the commonwealth had set up? A. No, I don't remember any such thing.

Mr. Kissam: Will you mark that for identification, whatever you were reading from?

Mr. Barnes: You want to mark the whole statement?

Mr. Kissam: Whatever you were reading.

Mr. Barnes: I do not believe there is any obligation to do it, but I will be delighted to do it.

Mark that for identification as Defendant's Exhibit 2, a report made by Lieutenant David Nison, of the Judge Advocate General's office, in an interview he had with General Drake on October 23rd, 1945.

(Report by Lt. Nisen, interview with General Drake, October 23, 1945, marked Defendant's Exhibit 2 for identification, as of this date).

68 XQ255. You referred to the service stations that were being used for the local distribution of gasoline; how many did you say there were, approximately? A. As I remember it, there were about thirty.

XQ256. Those were stations of all of the oil companies, were they not? A. Yes. We didn't make a selection as to any type of gasoline or oil to be used, any gasoline service station, if it was conveniently located along the Manila North and South Roads; we made the selection of about five kilometers apart, so there would be a continuous run of service stations, if you might call it that, from the north to the south.

XQ257. Your selection was made on the basis of location rather than anything else? A. Yes.

XQ258. Do you know how many of those stations were Caltex stations? A. No, I don't. We had a record of it and we made a survey long before December 8th, when we started in on our gasoline supply plan.

XQ259. That was part of your War Plan, the use of those gasoline stations as local distributing points? A. Yes, and also the big distributing centers were also surveyed
69 long before the war, in conjunction with the civilian service stations.

XQ260. You had made arrangements with the individual operators of those service stations, had you not? A. Yes.

XQ261. Did you give them receipts or delivery tickets of some type when you took gas from them? A. No. The instructions, if you are referring to after the war started—are you?

XQ262. Yes. A. The instructions were, to Colonel McConnell, that his representative there would keep a record and check of the gasoline issued to the truck—every truck that drew up got so many gallons, and that record would be kept.

XQ263. The idea was, you were going to pay for that at prevailing prices just as you intended to pay the terminals for gasoline shipped out of there? A. Yes.

XQ264. Who was in charge of the engineers in USAFFE? A. Then, Colonel Hugh Casey. He was Chief Engineer under General MacArthur.

XQ265. Did he have any authority with respect to
70 procuring gasoline and oil? A. No.

XQ266. Did he have any authority to procure gasoline terminal facilities?

Mr. Kissam: That is objected to. I do not know how the General can answer a question about authority of an officer in another branch of the service.

Mr. Barnes: He knows what the organization of USAFFE was and the authority of the officers was. He is a Regular Army officer.

The Commissioner: Objection overruled.

(Question read).

A. No.

Mr. Kissam: I would like to make the further objection and renew the motion, because the question can be misleading. I am not suggesting it is intentional. But the question, "any authority to procure gasoline terminal facilities"—for what purposes or for destruction? You can take plants for purposes of destruction—

The Commissioner: I understood the word procured to mean, in terms we have been using it here, in terms of Army procurement.

The Commissioner: Does that answer your question?

71 Mr. Kissam: It does, if the General understands it that way.

By Mr. Barnes:

XQ267. Do you recall making the statement that Colonel Casey had no authority to procure the terminal properties for use, although he did have charge of demolition; do you recall making a statement of that type to a representative of the Judge Advocate General's office? A. No.

XQ268. Would you say that was a correct statement? A. Yes.

Mr. Kissam: Are you reading again from Defendant's Exhibit 2 for identification?

Mr. Barnes: I was.

XQ269. Subsequent to this meeting which you date as December 12th, I think you made the statement that the Government controlled the facilities of the oil companies. What did you mean by the word "control" there, General Drake; just what did the Army do or the Quartermaster do? A. By the word "control" I meant that we would control the

operations of the distribution, using the facilities of the oil companies to make the distribution. That is, we would give the necessary orders to the oil company repre-
72. sentatives, and so on, so we could get the gasoline and oil out to the distributing centers. That would be the control. They would take orders from us and from no one else.

XQ270. In other words, you were still following your original War Plan to rely on their stocks of petroleum and petroleum products; is that right? A. Yes, because we had no other source to go to.

XQ271. You were routing those stocks through those facilities by your orders; is that right? A. Yes.

XQ272. Were you still allowing deliveries to be made to the other agencies that President Quezon had permitted to get gasoline—Fire Departments and hospitals, and so forth? A. I don't know how they handled that end of it.

XQ273. Do you know whether deliveries were made to those agencies? A. I couldn't say.

XQ274. You spoke of the fact that while you were on Corregidor you saw the results of the explosions at the terminals; you said that was demolition by Army action. Did the Quartermaster Corps order the demolition of the facilities? A. That was the function of General Casey.

XQ275. You did not order their demolition? A.
73 No. We have no authority to destroy anything. That authority rests in the hands of the Chief Engineer, under orders from General MacArthur.

XQ276. You referred to the fact that you had ordered containers for a million gallons of gasoline and that the containers were shipped full, from the United States. Is that correct? A. That is correct.

XQ277. Do you recall receiving a subsequent shipment from the United States of approximately 300,000 gallons of gasoline in drums? A. Not for the Quartermaster Corps. There was aviation gasoline shipped over, over which we had no control. The Air Force had their own control. They had gasoline shipped in, but it had nothing to do with us. It was for aviation.

XQ278. When did you first place a reserve stock of gasoline in Bataan? A. I would say around the 1st of September.

XQ279. That was part of this million gallons? A. Yes, it was what we had in Manila. We had the reserve supply in Manila—was located in the old water-works, the caverns of the water-works in Manila. It was a dangerous place to

keep the gasoline. I had the intention of putting it
74 over in Bataan, and when the opportunity came along to move it over there—when I stowed the gasoline in drums in the big reservoir there—I forgot the name of it there; it was wet and very dangerous to have it there because the cans most likely would begin leaking,—I got authority to get it out of there, finally, and shipped it over to Bataan.

XQ280. That was a reserve of about 300,000 gallons? A. Yes.

XQ281. And you had 100,000 on Corregidor, roughly? A. Yes, in fifty-five gallon drums. Of course, Corregidor had, in addition, a certain amount of gasoline in their own storage tanks—which we had nothing to do about, because it was used for the harbor defense forces.

XQ282. Those were not under your supervision? A. Yes, it was part of the harbor defense reserve, for the operation of the transportation, harbor defense transportation, boats and so on.

XQ283. When you refer to War Plans, do you mean war plans pertaining to the operation of the Quartermaster duties in the Philippines or general war plans for all the armed forces? A. I was referring to that part of the War Plans which pertain to the Quartermaster end of it. Part of the plan was our plan, and it was attached as an
75 appendix to the strategical plan.

XQ284. It had to be coordinated with the strategical plan? A. Yes. It was a Department Commander's plan, after he put it together with the strategical plan plus his supply plans, and things like that, which go with a strategical plan. That went to the War Department for approval.

XQ285. You stated, I thought, under direct examination, that no change was made in those War Plans. Do you mean those were the plans that were followed subsequent to December 8th? A. Yes. We followed them as closely as we could, with some exceptions which General MacArthur made in which he stated that certain parts of the plan would not be put into effect. But it had nothing to do with the supply plan, except I had to work up for the mobilization a supply plan for mobilization, which was General MacArthur's plan.

XQ286. You are referring to the mobilization of the Philippine Army? A. Yes.

XQ287. Hadn't you been led to believe that the portion of the plan that would have called for the stocking of Bataan

was abandoned? A. Under General MacArthur's
76 plan, strategical plan, his decision was to fight the enemy at the beaches, at the landing beaches, and not retire to Bataan. That part of the plan, the defense plan which had to do with Bataan, would not be followed.

XQ288. General Drake, during the time that you were a prisoner of war of the Japanese you prepared two reports of your operations in the Philippines, did you not? A. Yes.

XQ289. Only the second of which survived your period of incarceration? A. Yes.

XQ290. Was that filed with the War Department after you were released? A. That was—when I got back, I had the plan which I had prepared personally. It is my own, personal plan, without the necessary appendices from the different Chiefs of Services. When I got back to the United States, I was assigned to Washington, at the Quartermaster General's Corps. I went to General Gregory and told him I would like to prepare a complete plan for our operations in the Philippines and, in order to do so, I wanted the help and assistance of my Chiefs of Services and their assistants, in order to make a report for the Quartermaster Gen-
77 eral. This was purely voluntary on my part.

The War Department ordered these officers in and we prepared the particular plan which is now on file with the War Department in the Quartermaster's office.

The Commissioner: Do you mean plan or report?

The Witness: Pardon me, I mean report.

By Mr. Barnes:

XQ291. Let me show you this document and ask you if that is the photostatic copy of that report, with appendices?

(Mr. Barnes hands document to witness).

A. Yes, this is the report.

Mr. Barnes: I would like to offer this in evidence as Defendant's Exhibit 3.

Mr. Kissam: I have no objection. As far as I am concerned, it is correct.

The Witness: As far as I can see, it is complete.

Mr. Kissam: You will represent it as a complete report?

Mr. Barnes: I will represent that it is the complete report, or is the report transmitted to me by the War Department as the complete report. If it develops that anything

is missing, I will be glad to supply it at a later date.
78 Mr. Kissam: I have no objection.
The Commissioner: So received.

(Photostatic copy of General Drake's report of operations, Quartermaster Corps, U.S. Army in the Philippine Campaign, 1941-42, received in evidence and marked Defendant's Exhibit 3, as of this date).

By Mr. Barnes:

XQ292. In this organization chart we were considering, where did Colonel Cook and the Cebu Advance Quartermaster Depot fit, were they under Colonel McConnell, Colonel Bersina, or under you? A. Because of the nature of the Advance Depot in Cebu, the importance which it attained in the Bataan affair, we moved our base—we lost the Manila base and moved it then to Cebu, and it was placed under General MacArthur's Headquarters for operations—

XQ293. That was on or about January 1st, 1942? A. It was—I can't tell you the exact date. It wasn't very late during the war, it was quite early. We saw we couldn't operate from the Manila base any longer, we decided to shift our line to Cebu. I will say, yes, it was after January 1st, but not very late after that.

XQ294. In any event, it was after you left Manila,
79 December 24th, that operations change was made? A. Yes.

XQ295. Cebu was put directly under General MacArthur's Headquarters? A. Yes. Another reason why it was done, the Commanding Officer of the forces in the southern islands tried to operate that depot, since we would lose control and supervision of it, and as we were going to use it as a large base to receive our supplies eventually from Australia and the United States, we decided that that particular depot would be a particular type of depot under USAFFE Headquarters.

XQ296. Prior to that change, where did the Cebu Depot fit, organizationally? A. It was originally intended and operated for a while under the Department Quartermaster, as one of his facilities.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Kissam: R

RDQ297. General, you testified that originally the idea was, with respect to petroleum products utilized by the Army for their own purposes, that some sort of a tally record would be kept? A. A tally record—just exactly
80 how Colonel McConnell operated, as to just his method of keeping a record of the gasoline sent out of Pandacan, I don't know. But I made a suggestion, it was some kind of a tallying sheet which would show the amount of gasoline and where it went to to the distributing centers.

RDQ298. Did you give any instructions that any gasoline taken from the terminals would be signed for? A. I wouldn't say so, no.

RDQ299. Did you personally know whether or not the records intended to be kept were, in fact, kept? A. No, I don't know. That was Colonel McConnell's function, of keeping the records.

RDQ300. Do you know, of your own knowledge, whether gasoline stations on Taft Avenue, on Padre Faura and Rotonda were gasoline stations owned by the Caltex Company? A. I don't remember who owned the stations. I saw them operating with Army personnel present.

RDQ301. You were not in a position to identify them as being stations of one company or another? A. I couldn't do that.

RDQ302. You were asked what you meant by "control", and I understood you to say that the intention was that the Army would pay, would hope to pay for the gasoline
81 that it used; is that right? A. Yes.

RDQ303. Your original defense plans anticipated a defense of not less than 180 days, correct? A. The defense plans called for 180 days of operations in the Philippines before an expeditionary force could land and relieve us.

RDQ304. When you calculated your supplies for a defense of that duration, you, of course, calculated your fuel supplies? A. Yes.

RDQ305. Actually, your defense, instead of lasting 180 days, lasted some twenty-three days—that is, from about the 8th or 9th of December to the end of December, 1941? A. That was the period in which we used the gasoline and oil of the commercial oil companies.

RDQ306. But the intention was that the oil and the facilities would be available during the duration of the defense,

would be used during the defense? A. Yes.

RDQ307. In other words, you did not have an opportunity to carry out your plans because the Japanese came in? A. Yes.

82 RDQ308. During this twenty-three days, you said that the Army directed how the gasoline would be distributed and that in order to effect distribution the facilities at the various terminals of the oil companies were utilized; is that correct? A. Yes.

RDQ309. During that time, could the oil companies, if they disagreed with you, ship gasoline to a customer or to another oil company? A. No.

Mr. Barnes: I object to that and move to strike the answer, your Honor, as calling for a surmise on the part of the witness.

Mr. Kissam: If your Honor please, it is no surmise. They either could or could not.

The Commissioner: Why wouldn't this witness know, Mr. Barnes?

Mr. Barnes: This involves a question as to the commonwealth regulations, too, your Honor, in which you ruled adversely to me just a few minutes ago.

The Commissioner: This was confined to the control by the Army. Read the question.

(Question read).

The Commissioner: Objection overruled.

83 Mr. Barnes: Exception.

(Discussion off the record).

By Mr. Kissam:

RDQ310. Based on your personal knowledge, did the oil companies or the Army, after December 12th, 1941, control the use, the actual use, of their equipment—such as automobiles, tank trucks and things like that? A. They did not control the use of them.

RDQ311. Did the Army control the use? A. The Army controlled the use.

RDQ312. And that situation persisted until the time Manila was evacuated, so far as you know? A. So far as I know, yes.

RDQ313. What I was getting at with the other question, General, was this: Let us assume that the Army utilized "X" gallons of gasoline, leaving "Y" gallons in the tank. Who controlled the use of the "Y" gallons in the

tank after December 12th, 1941? A. As far as I know, the Army was supposed to have complete control.

RDQ314. That was the arrangement, wasn't it? A. Yes.

RDQ315. In fact, wasn't a directive issued from
84 higher Headquarters which related to the taking of equipment, certain equipment—for example, automotive equipment in the islands? Wasn't there a directive directing the Army to take over? A. For requisitioning motor vehicles.

RDQ316. You are using "requisitioning" in the sense of taking, not in the sense of ordering something? A. It is a war requisition, which is a demand that it be turned over, and a receipt given for it.

RDQ317. So far as you know—and I am not talking of records that were created after the war was over—are any original records which were made up between December 12th, 1941, and thereafter, up to the termination of the war, relating to the properties of the oil companies, so far as you know, are any such records in existence? A. I have never seen any.

RDQ318. The report which has been marked Defendant's Exhibit 3 in evidence, your report, supplemented by the reports of some of your staff, was that prepared, to the best of your recollection, without reference to any records? A. The only references I had were some notes which I had kept in a pocket notebook, which I didn't lose. All my other records, which I couldn't carry on my person when I
was made a prisoner of war, I destroyed or the Japa-
85 nese took them away from me. I tried to hide them for perhaps returning at some future time and locating those records, but in every instance I lost out and didn't get my records hidden.

Mr. Kissam: That is all.

Recross Examination

By Mr. Barnes:

RXQ319. You referred to a directive relating to the requisition of motor vehicles. Let me show you this document, which is attached to Colonel Quinn's appendix to your report, headed: "Subject: Report on Motor Vehicles," and addressed to the Commanding General of the North and South Forces of Luzon, dated December 18th, 1941, and ask you if this is the document you refer to? A. This document was obtained by a chief of the Motor Transport

Service, in going through the War Department files, as I understand it, in the Adjutant General's Department in Washington. My signature is not under it, so I had nothing to do with it. So far as preparing my own personal report is concerned—

RXQ320. What I was trying to find out is this: You said there was some kind of directive issued from higher authority with respect to the requisition of motor vehicles; wasn't that your testimony just a minute ago? A.

86 Requisition of motor vehicles?

RXQ321. Yes, requisition for use, as distinguished from ordering. A. I remember the time the matter came up; Colonel Quinn was directed by USAFFE Headquarters to requisition the necessary motor vehicles. We had worked up a plan but it was not accepted by USAFFE Headquarters. Therefore, when the time for obtaining motor vehicles came, we having no plan, USAFFE Headquarters, as I remember it, issued instructions to Colonel Quinn to requisition the necessary motor vehicles.

RXQ322. That is what you were referring to and not this document here? A. Yes; I knew nothing about that document whatsoever.

RXQ323. Do you recall Mr. Kissam's question of a minute ago in which he asked you a more or less hypothetical question, where the Army used "X" gallons of gas and "Y" gallons were left in the tank; you said that the Army controlled the "Y" gallons, too, that were left in the tank? A. It was the understanding and agreement that all the gasoline and oil in the storage tanks belonging to the oil companies would come under the control of the Army. That is what I meant by that. Both the "X" and the "Y"—

87 which was used and the remainder in the tanks—were used by the Army as needed.

RXQ334. Why was it that you did not give a blanket order for all of the gasoline in their tanks at the time of this meeting, on December 12th? A. The agreement was that we would not sign for and make record of any gasoline which we didn't use.

RXQ335. I am trying to get the distinction between control and use. Let me put a hypothetical question and see if we can clarify this. Suppose, after you had used "X" gallons, Japan had suddenly collapsed and we had won the war, and there were still "Y" gallons left in the tanks of the oil companies. Who would have owned that gasoline, or who would have controlled its disposition?

Mr. Kissam: I object to that, because I think that is a legal conclusion. That was one of the questions in this case, but it is no longer because of the release to which your Honor's attention was attracted this morning.

The Commissioner: Objection overruled. Let him answer the question, if he knows.

(Question read).

A. I would assume that it would be returned to the oil companies, if we hadn't signed for it, and therefore it would revert to them. But as long as the emergency existed,
88 and there was a war going on, that gasoline was under the control of the Army.

RXQ336. You had the right to use it so long as you needed it for military purposes? A. Yes. If the war went on for six or eight months, we would still be using that supply.

RXQ337. You referred to the fact that you controlled the use of the facilities of the oil companies after December 12th, but the only facilities that were specifically referred to were their trucks and tank cars and other delivery mechanisms. Was that what you were referring to by "facilities"? A. That and their personnel. We had no personnel to operate. It meant that everything that the oil companies had prior to the war for the distribution of their gasoline, we would use those facilities for the Army needs; because the Army could not take over and operate those facilities. In fact, I don't think we would have done that if we had the personnel.

RXQ338. So, when you used the word "facilities" here, you were referring to the facilities maintained by the oil companies for distributing their products from the terminal to the filling stations and other users; is that correct? A. Yes.

89 RXQ339. As well as the personnel that they used in loading those delivery units? A. All the personnel in the Pandacan plants that had to do with the handling of gasoline and oil.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Kissam:

RDQ340. In being specific in referring to the facilities of Caltex, are you in a position to testify whether the Army took over and controlled, in addition to tank cars, trucks and the wharves and things which Mr. Barnes re-

ferred to which relate primarily to transportation of gasoline, are you in a position to testify that they also took over the use of the can factory machinery, which manufactured these containers in which the gasoline was shipped and dispersed? A. I can only answer it this way: There was an agreement which hasn't been brought out between the oil companies and ourselves at the first meeting, in June, 1941, that the oil companies would, if called upon, use five gallon containers in the distribution of gasoline and oil, due to the fact that those were the only containers available at the time—if needed—and they would fill them and preserve them with a preservative paint, so we
90 could keep them in the field without rusting.

RDQ341. Wasn't it a fact after December 12th that the companies, including Caltex and those companies which had facilities like Caltex—that is, had their own can factory—went on manufacturing, under the direction of the Army, these containers?

Mr. Barnes: I object to this, to the extent it relates to companies other than Caltex. It seems to me to ask for surmises from a witness who admittedly says he never made a survey of the plants, when Caltex obviously has witnesses who can give us an answer to this.

The Commissioner: Objection sustained, so far as it goes outside the company.

Mr. Kissam: You do not have to make an inventory to see a can factory, while you are walking through a terminal.

RDQ342. That was rather a large factory? A. Yes—I didn't make a personal inspection, I left that for Colonel McConnell. I didn't even know there was a can factory over there, but I know we got plenty of cans, because I saw them, and they must have come from Pandacan. The oil companies had them, because they said they would furnish them. Where they got them, I don't know.

91 RDQ343. So far as you know, every facility that Caltex had at Pandacan after December 12th was utilized under Army control, was it not? A. We expected that. As to the actual operation, I don't know—

RDQ344. Go back to the meeting: Was that the agreement reached at the meeting, that the entire facilities, regardless of what the facilities happened to be— A. Which had to do with the distribution and procurement of gasoline and oil, petroleum products; the whole idea was to supply

gasoline to the Army. As long as it got to the truck, that is what we wanted.

Mr. Kissam: That is all.

Recross Examination

By Mr. Barnes:

RXQ345. General Drake, I hate to keep coming back to this but I find it very hard to visualize in my mind the exact scope of this agreement or understanding you reached with the oil companies. I would like to have you describe it again, in your own words, as accurately as possible, placing limits around it to show its extent in all directions.

Mr. Kissam: Hasn't that been adequately covered, your Honor?

92 The Commissioner: Is this the summer or December agreement?

The Witness: I would like to begin with the first meeting, in June.

Mr. Kissam: I am making an objection on the ground that that has all been testified to.

The Commissioner: This is cross-examination, Mr. Kissam. I am inclined to let Mr. Barnes cross-examine as far as he sees fit.

Mr. Barnes: It seems to me this is the heart of the case, to a very large extent. The witness, in referring to what was actually done, refers to the prior agreements and that action was taken in conformity with them. I would like to find out as accurately as possible just what those agreements are, since we have no writings and we have to rely on memory. I do want to have this as clear as possible in the record. I know it may be repetitious.

Mr. Kissam: While it is cross-examination, I feel it has been covered by the direct examination.

The Commissioner: I understand there is an element of repetition in it. I am still inclined to permit it.

We will take a short recess first.

93 (A short recess was taken).

The Commissioner: Let us proceed. Will you read the question, Mr. Reporter?

(Question read).

RXQ346. Go ahead. A. In the first conference, in June, 1941, the matter of control at that time had to do with 50

per cent of the gasoline which would be in storage in the different storage tanks of the oil companies, if an emergency arose. We having no personnel, it was agreed that in handling this 50 per cent of the gasoline and oil and petroleum products in storage at that time, it would be handled by the facilities of the oil companies. By that I mean, that since we did not have any facilities whatsoever in the way of tank trucks or tank cars or personnel, that the oil companies would use their own facilities to handle this distribution of gasoline and oil to the Army. That remained as such, on that 50 per cent basis, until the war came along and President Quezon froze all gasoline.

The Commissioner: What did the 50 per cent apply to, the gasoline or equipment?

The Witness: Gasoline.

The Commissioner: 50 per cent of the gasoline, or
94 were they to handle 50 per cent of it for you—did you take it all and they handled 50 per cent?

The Witness: We were authorized to draw—we would draw against the gasoline and oil 50 per cent of what was in storage; not immediately, but as we needed it, as it would go out in the field. In putting that out, distributing it, it was the agreement that the oil companies would use their facilities for doing that, because we had none.

Then, when all gasoline was frozen, the oil companies agreed to turn over—not to turn over, to allow the use of all the gasoline in storage in their tanks in the Pandacan area and in the distributing centers that we had selected. Again, the facilities were placed at our disposal for handling that distribution. In other words, we had authority to draw against 100 per cent gasoline in Pandacan.

By Mr. Barnes:

RXQ347. And to use their facilities for putting it where you wanted it, their delivery facilities? A. Yes. That was the understanding, that it would continue until the end of the war, until relief came or until we could get some
95 other method for getting other supplies of gasoline, if necessary. But it was never contemplated other than that which was available locally.

RXQ348. After the withdrawal to Bataan, you were, of course, as I think you testified, cut off from the Pandacan Terminal? A. Yes.

RXQ349. You no longer could use their facilities? A. No.

RXQ350. Did your agreement cover that contingency at all? A. No. At that time General MacArthur made a change in his strategical plans and we had to move as much gasoline as we could from Pandacan, and our own reserve storage in fifty-five gallon drums, to Bataan. Then we used all the facilities we could get at that time in the seven or eight days we had in moving it, all the facilities we could get our hands on in moving it—tank trucks, barges, tankers, scows, and a great many tins of five gallons, which the oil companies had agreed to fill for us and turn over to us.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Kissam:

RDQ351. You were just asked a question: Whether the facilities were available after you moved over to
96 Bataan. I thought the facilities had been blown up by the engineers. Didn't they blow the whole thing up before the Japanese came in? A. I am not positive as to date; I think it was the 28th of December.

RDQ352. The date is not important—just before the Japanese came in? A. Pandacan was destroyed by General Casey, his personnel, the engineers, by burning it up.

RDQ353. So the facilities would not be available to anybody, including the Japanese? A. The idea was to deny it to the Japanese.

RDQ354. You were asked earlier about special facilities. I want to get at the control of all facilities. Let us take a gasoline tank—storage tank—gasoline that you did not use or have the opportunity of using: Could the oil companies use that tank for any other purpose except to maintain storage? A. No, not in Pandacan.

RDQ355. In other words, even though you did not use the gasoline, the tank was used for the storage of gasoline in the event you wanted to use it? A. That is right.

RDQ356. This report that you have identified, and
97 is in evidence, was prepared by you as of what date—Defendant's Exhibit 3? (Mr. Kissam hands document to witness).

Mr. Barnes: I think the exhibit speaks for itself, unless you have some special purpose.

Mr. Kissam: I have, I want it in the record.

A. This report was signed by me after it was put together

by the Quartermaster General; and we prepared, I think, about twelve copies of this report.

RDQ357. As of what date did you sign it? A. I signed this report on April 24th, 1946.

RDQ358. Does the date below your signature indicate the actual date when you signed it? A. Yes.

RDQ359. The date is in your handwriting, isn't it? A. Yes.

RDQ360. On April 24th, 1946, had you ever had any conversations with anybody representing Caltex? A. No.

RDQ361. In other words, your report, Exhibit 3, was on file with the War Department in 1946 and the first time you talked with anybody representing Caltex was within the last year; is that right? A. This year, yes.

98 RDQ362. Are all the statements contained in Exhibit 3, to your best recollection, true and accurate? A. My best recollection, they are true and accurate.

Mr. Kissam: I would like to read into the record the following statement of General Drake, which he made on April 24th, 1946, which was long before—

Mr. Barnes: I object to reading portions of this. This can go on interminably. The parties can call any portions of this exhibit to the Commissioner's attention.

Mr. Kissam: This is a long report and I think it will be for your convenience and everybody's if I read this short excerpt into the record. I am going to read one thing.

The Commissioner: The point is, if you start it and Mr. Barnes is so inclined, what is to prevent him from reading another excerpt and who is to determine what is a long one and what is a short one?

Mr. Kissam: I cannot answer that one. Suppose I try it, and he may not do it.

Mr. Barnes: I assure you I am going to, if you start.

The Commissioner: I will have to restrict you to calling attention to it.

99 Mr. Kissam: I am going to call attention to it by attracting the attention of the witness to it.

RDQ363. Attracting your attention to page 17, which I note has a number on the right hand corner, 18, but the typewritten number is 17—attracting your attention to this language: "On December 12th I called a conference of interested Army and Navy officers and representatives of the oil companies to determine the most sagacious manner of disposal. This group, after much discussion, agreed to turn over the control of distribution and issue to the

Army; all the facilities of these companies, including their transportation and personnel, were placed at the Army's disposal."

Does that statement correctly reflect what you intended to report? A. Yes.

RDQ364. And that, in substance, is the testimony which you have given today? A. Yes. In other words, they offered everything 100 per cent at Pandacan for the Army's use.

Mr. Barnes: The last words Mr. Kissam read there were "Army's disposal."

(Discussion off the record).

100 Recross Examination

By Mr. Barnes:

RXQ365. What did you mean by "the Army's disposal"? A. Use.

By the Commissioner:

Q366. I wonder if you will outline very briefly the beginning and conduct of hostilities on Luzon; when did they start and what was their progress? A. Without notes, it is going to be difficult to give you the exact dates. But it is divided, we might say, into two phases. Starting with December 8th, the Japanese began bombing in Luzon military objectives. They bombed the airports, Nicholas Field, Neilson Airport, Clark Field, Ibo. Their endeavor at that point was to put out our Air Force.

The Navy, as soon as war was declared, received instructions—this is purely from my own knowledge of it, I have nothing official on this—the Navy received orders to vacate the Philippines and go to Australia, so we had no navy to meet the next phase of the operations, which was the landing of the Japanese Army on Luzon. That began after our Air Force had been destroyed, and the Navy had disappeared. I don't remember the exact date.

I also could say, in bombing military objectives,
101 they also bombed the Navy Yard at Cavite. They also bombed all the cargo vessels in the harbor that were grouped together just outside the breakwater of Manila Harbor. They strafed and bombed the bridges having to do with our transportation, rail transportation, and also endeavored to hit our own facilities—Quartermaster facilities—at Tarlac and Guagua. In other words, their

idea was to put us out from the air as much as possible before their landing.

About the middle of December, I think it was, we will say about the 14th or 15th, the Japanese made their first landings.

Q367. The 14th or 15th of December? A. Yes. Their first landings, instead of at the beaches which General MacArthur was defending at that time, they landed far north, at some bay—I can't give you the name of it right now without referring to my own notes.

Mr. Barnes: Vigan-Cagayan?

The Witness: Yes.

A. (Continuing) They made a successful landing, without opposition, and began moving south. Eventually our cavalry, with tanks, got in touch with them and tried to resist their advance. The first defensive position which they struck was the defense position on Lingayen Gulf,
102 which is in north central Luzon. They made a feint at the beaches in landing and then went around, as I remember it, our right flank. There was quite a bit of fighting on the flank, and that went on until December 24th, when General MacArthur then changed his decision to fight on the beaches, because he had been outmaneuvered on his landing beaches.

In the meantime, the Japanese also landed at Lugaspi, which is the southern extremity of Luzon, to come from the south toward Manila and Lamon Bay—that is on the Pacific side, or the eastern side of Luzon and southeast of Manila—with the Lugaspi forces and with the force that landed at Lamon Bay, they advanced towards our defensive positions in the south. Our defensive positions were originally intended to defend the Batangas area.

Their landing and advance was slightly opposed and by the time they reached our first defensive positions, the force which came down from the north had outmaneuvered General MacArthur's beach defenses, so he gave a general order to retire all his forces on Luzon to Bataan. That commenced on the 24th, when the order was issued, and continued in a rapid retreat by both the southern force and northern force until the evacuation of Manila, which was on January 1st.

The troops finally got into their first defensive
103 position in Bataan January 3rd, 1942. From then on it was a defense of Bataan Peninsula and we were

completely cut off from complete communication from the outside world, as far as lines of communication were concerned by the water. We did have a certain amount of air communication, but it was very meager and not satisfactory.

By the Commissioner:

Q368. You referred two or three times to General MacArthur's change of plan of defending the beaches; there was only one change, your references are all to the same change? A. Yes.

Q369. That change was made when? A. That was on December 24th, when I was called in to the office of General Sutherland, who was General MacArthur's Chief of Staff, and informed that General MacArthur had made a decision to retire all our forces to Bataan; and I would have to be immediately in Bataan, stocking with quartermaster's supplies and furnishing transportation for all supplies which would be put on Bataan for the defense of that peninsula. That included signal, medical, ordnance, engineer and quartermaster supplies of all kinds, to continue the defense of the Philippines in that particular area.

Q370. Generally, how did the beginning and con-
104 duct or progress of hostilities coincide with the plan of defense you had? In other words, did the plan hold or did you revise it radically and rapidly? A. You mean the first, original plan?

Q371. Yes. A. It worked practically as it had been planned before the war, before General MacArthur took command of USAFFE. The Department Defense Plan, which I have referred to, was prepared and signed by General George Grunert, who was Department Commander. That plan had a gradual withdrawal from Bataan from the same beach defenses, or defense sectors, and that was a gradual withdrawal in which we would be given time—I mean the supply people—

Q372. A withdrawal over a period of six months? A. No. It was estimated that they would try to make it as slow as possible. My estimation, in making logistic study of what could be done, I figured if we had had approximately three weeks, twenty-one days to stock Bataan, we would have had the necessary defense supplies there to continue the operation in accordance with our defense plans of six months or 180 days.

Q373. Your defense plan of 180 days, as I understand,

contemplated accessibility to the oil facilities, did it
105 not? A. As long as we could use them, just as long as we could possibly use them. When we got on Bataan we were not sure whether the Japanese would take Manila or not.

Q374. Your defense plan extended for 180 days? A. Yes.

Q375. But it did not necessarily imply that these facilities would be available or accessible all of the 180 days? A. We felt, in preparing the plans, that the facilities would have to be destroyed when we abandoned Manila. When we abandoned Manila, we didn't know when that would be.

Recross Examination

By Mr. Barnes:

RXQ376. You felt that three weeks would be adequate? A. After the withdrawal started. We didn't know how long the troops would stick to the beaches before they were given the gradual withdrawal. General MacArthur figured until the war was over, because he was going to fight it out at the beaches, and that was all there was to it. How long he was going to stay there, no one knew. But he was going to keep on fighting right at the beaches.

RXQ377. To go back to one of the Commissioner's questions, he really abandoned part of the original Depart-
106 mental War Plan at that point? A. Yes.

RXQ378. Then he subsequently, in effect, reinstated it on December 24th, only he then had rapid withdrawal because of military circumstances? A. It became the only thing he had available to work with, because we did have a plan for a retirement to Bataan; but the time was so short that we couldn't carry it out. Instead of having two weeks or twenty-one days, why, we only had seven days to do it in. The troops retired so rapidly, we didn't have time to evacuate the supplies.

RXQ379. You spoke of the bombing of military installations by the Japanese; did they bomb the Pandacan Terminals at all? A. Not that I know of.

RXQ380. It would normally have been considered a military objective, would it not? A. To us it would be. To the Japanese, no, because they wanted the facilities. They wanted the gasoline. They would not bomb something which they could use to carry on the war. They needed gasoline badly.

RXQ381. They had not yet taken the Dutch East Indies

and gotten access to those oil fields? A. No. They needed gasoline and we knew it.

107 The Commissioner: Thank you, General Drake.

(Witness excused).

MICHAEL A. QUINN, Kansas City Quartermaster Department, Kansas City, Missouri, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Kissam:

Q1. Will you state your rank, where you are stationed, and serial number? A. Colonel, Quartermaster Corps, serial number, O-10882.

Q2. At present, you are still on active duty in the United States Army? A. Yes, Commanding Officer of the Kansas City Quartermaster Depot.

* * * * *

123 * * * * *

By Mr. Kissam:

Q18. In 1941, were you on active duty and, if so, will you state where you were stationed and your duty assigment?

A. I was stationed at Port Area, Manila, Philippine
124 Islands, Commanding Officer of the Philippine Motor Transport Depot, and Department of Motor Transport Officer.

Q19. After December 8th, 1941, when war was commenced, did you, in your capacity as an Army officer, commandeer or take vehicles of different types and description which were in the Philippine Islands and which belonged to individuals or corporations other than the United States Government for Army purposes? A. I did, sir.

Q20. Will you state, generally, the circumstances? A. We were short about 90 per cent of the motor equipment that we needed. To make up that deficit, as long as we were cut off from a possible source of supply, I acquired all new passenger vehicles in Manila and all new trucks, as soon as I possibly could get them. In other words, they were frozen by noon on December 8th, Manila time.

As we got better organized, I picked up used commercial

vehicles—that is, trucks, autocalesa—but I picked up very few privately-owned passenger cars, due to the fact that I didn't know what condition they would be in and I didn't want to start a war with a bunch of wrecks.

Q21. When you say you picked up very few, you mean few used passenger cars? A. Yes, sir.

125 Q22. With respect to tank trucks capable of transporting gasoline, did you take any of those for Army use? A. I took every one that I could find in the City of Manila.

Q23. Do you have any recollection of taking any tank trucks owned by Caltex (Philippines), Inc.? A. I cannot say that I took any from Caltex, but if Caltex had any in Manila, I took them.

Q24. If we demonstrate the existence of a tank truck, your testimony is, if it was in Manila, you had it? A. I can't imagine them hiding it out on me.

Q25. I am going to read to you a list of the automotive equipment which, by other witnesses, we will demonstrate was at the Pandacan Terminal in December, 1941; and I want you to tell me if any of it refreshes your recollection as being the equipment that you took, or being the type of equipment that you were taking:

A White tank truck, with a four compartment tank, 2900 liter capacity; a White tank truck with a five compartment tank, 4,750 liter capacity; an International tank truck, three compartment tanks, 2700 liter capacity; International tank truck, four compartment tank, 4,000 liter capacity.

126 Now, addressing my question first to those four tank trucks that I have described, do you have any recollection? A. That they belonged to the Caltex, I cannot swear. There were about forty or fifty tankers in Manila at Pandacan, some of which I used before the war, in maneuvers. I knew they were there and I sent out and got all of them. If you can show they were there, I will have to accept the responsibility for taking them.

Q26. As a matter of fact, Colonel, wasn't there a memorandum emanating from higher authority on or around the 14th of December, 1941, which directed the seizure of all types of vehicles at once? A. Yes, sir, but I had nothing to do with that.

Q27. I did not ask you that. I asked you whether there was not such a directive. A. Yes, sir.

Q28. Going on with the list, did you take any International stake-trucks—we will demonstrate by other witnesses we had three International stake-trucks—two Model K-6

and one Model 40? A. I would believe I would have taken them, sir.

Q29. If you found them at the Pandacan Terminal you would have taken them? A. Yes, sir.

127 Q30. How about Ford stake-trucks? A. Yes, sir.

Q31. How about a Fruehof, three and a half ton capacity? A. I had a couple of those in Bataan with me, so it is very likely I took that.

Q32. How about a Chevrolet panel-body truck, Model J-E? A. All those were picked up and used as ambulances.

Mr. Kissam: That is all.

Cross Examination

By Mr. Barnes:

XQ33. You spoke of the fact that the new passenger vehicles and trucks were frozen by noon on December 8th? A. Yes, sir.

XQ34. What do you mean by the word "frozen" there? A. I had no authority to commandeer vehicles, but I called all dealers to my quarters and asked for voluntary cooperation—that they would not sell any of their motor transportation, supplies or equipment until I could get my requirements satisfied. All dealers voluntarily cooperated. There was no force used at all. I merely put representatives of my office down there to back up the civilian agencies when civilian personnel came in and asked for equipment. They were told these were being reserved for the Army.

128 However, it was entirely voluntary.

XQ35. You said just now that you did not have authority to seize them on December 8th? A. That is true.

XQ36. What about these tank trucks and so forth that you said you later took, did you later acquire authority? A. I merely asked and they gave them to me.

XQ37. You did not have to take them by force? A. No, sir.

XQ38. Did you give them receipts? A. Yes, sir.

XQ39. How did those receipts read? A. Informally mimeographed, stating that I certify that I have this day received from such and such an organization the following motor equipment, giving motor number, serial number, type of body, and so on.

XQ40. Did you sign those, or did somebody on your staff? A. Either I or one of my officers, delegated by me. They were all part of my records, however, which were destroyed.

In addition to that, all that new equipment, if the owners did not collect for it before the Japanese moved in, that was their own problem. Those people who had used equipment, we acquired it rather gradually, so it is quite
129 possible they could not get in their statements and collect their money.

XQ41. I assume the problems of evaluation on used equipment would be a little more difficult than on new, anyway? A. Yes, sir. Although we did have the valuation of every vehicle on the Philippine Islands.

XQ42. What do you mean by a valuation of it? A. My office had the record of every vehicle in the Philippine Islands, civilian as well as military. How long they had been in service and also what the general reputation of care for vehicles was.

XQ43. Of the owner? A. Yes, sir. So we had a pretty good idea what we were getting.

XQ44. You mean, on the basis of that information, you felt you could make a fast valuation—or had you already put values on? A. No, we had no valuations put on, but we knew we could arrive at a reasonable valuation very quickly. Those with whom we dealt we had no arguments with.

XQ45. Had you made settlement for any used motor vehicles prior to the withdrawal from Manila? A. Yes, sir, those vehicles which we first took on a rental basis,
130 the rental had been set up by the Philippine Commonwealth on a controlled basis, depending on the tonnage. We agreed to pay that rent, to pay the driver, and when the amount of the rental equalled the total value of the truck, then the truck became the property of the United States. If the truck did not come back, then the owner would be compensated up to the value of the truck at the time we took it over.

XQ46. So far as these tank trucks were concerned, were they among the earliest vehicles you took? A. No, sir. They were taken, I would say, sometime between the 15th and the 20th of December.

XQ47. Do you know whether they were taken on a rental basis or on a title basis? A. I took those on a title basis.

XQ48. Do you know whether you paid compensation to any of the owners? A. I don't know whether they were paid or not. They were not taken on a rental basis, I recall.

XQ49. What about the stake-trucks, when were they taken? A. About the same time, because they were loaded

with gasoline in five gallon tins, two of which were packed to a case; and we scattered those things in groups throughout Manila and out north, in Manila.

131 XQ59. That was before the decision was made to withdraw to Bataan? A. Yes, sir.

XQ51. Do you know whether you had reached an agreement with respect to compensation with the owners of any of those stake-trucks? A. By that time they were acquired the same way as the tankers. We needed the stake-trucks badly.

XQ52. Had you paid any of the owners before you withdrew? A. No, I don't know if they were paid.

XQ53. What about the Fruehof trailer; if you took it when, approximately, did you take it? A. When I took the tankers, if it was taken.

XQ54. Do you know whether any compensation was paid to the owners of the Fruehof trailer? A. I do not know.

XQ55. What about the Chevrolet panel-body trucks, any of them; would those have been taken earlier or later? A. It seems to me they would have been taken pretty early. We needed them for ambulances.

XQ56. Would they have been taken on a title basis or used basis? A. I believe on title basis. You mean we would change title?

132 XQ57. You said you had some which you took on rental basis; would you have taken them on rental basis? A. Most likely on a title basis.

XQ58. Do you think they might have been taken somewhat earlier? A. Very likely.

XQ59. Do you know whether compensation had been paid for any of those? A. I do not know.

XQ60. Because they were taken earlier, would it have been more likely that compensation had been paid for them? A. It could have been paid.

XQ61. Mr. Kissam asked you about this directive which was issued on December 14th, 1941, relating to the requisition of motor vehicles; was that addressed to you? A. No, sir.

XQ62. To whom was it addressed? A. Addressed to everybody but me.

XQ63. Is this document a copy of it, which I am showing you, which is dated December 18th? (Mr. Barnes hands paper to witness). A. No, sir, that is not it.

133 Mr. Kissam: You will find it on page 9 of Colonel Quinn's report—of Exhibit 3.

Mr. Barnes: He has his own report, and I have already given it to him.

The Witness: That is a statement of my report: "Attention is invited to memorandum of USAFFE for the Commander in the Field, marked Exhibit B attached, Diary G-4 USAFFE, 14 December 1941, which directs the seizure of all types of vehicles at once."

Mr. Barnes: Let me say, for purposes of clarification, that that is a page marked in the lower right hand corner 162, in Defendant's Exhibit 3, and it is part of Colonel Quinn's report, which is Appendix C to General Drake's report.

By Mr. Barnes:

XQ64. This is your report, starting here at page 153, at the bottom? A. Yes.

XQ65. Or a copy of it, rather? A. Yes, sir. There is my signature.

XQ66. Appearing on page 170? A. Yes, sir.

Mr. Barnes: My next question will go beyond the
134 scope of cross-examination, and I think I will probably have to make the witness my witness.

Redirect Examination

By Mr. Kissam:

RDQ67. When you gave these receipts for tank trucks, stake-trucks, other vehicles, I assume you were issuing those receipts in behalf of the United States Government, acting through the United States Army, were you not? A. Yes, sir.

RDQ68. You said you do not know whether people were paid or not; you mean you, personally, did not pay anybody for trucks, did you? A. No, sir. The Finance Officer pays all that.

Mr. Kissam: That is all.

Recross Examination

By Mr. Barnes:

RXQ69. Were you present at a conference which General Drake had with representatives of the oil companies, either in June of 1941 or on or about December 12th, 1941? A. I was present at a conference in June but not the one he referred to in December. There was a later conference,

about December 20th, at San Beda College in Manila that I attended.

135 RXQ70. Let us go to the first of those conferences, in June. Who do you recall was present at that conference? A. General Drake, Kalakuka, Colonel McConnell—well, I can't remember any of the rest of them.

RXQ71. What about the representatives of the oil companies? A. I remember a Mr. Rockwell or Rockwood, who was the manager of the Standard Oil Company, who seemed to be the spokesman for the oil companies as a whole.

RXQ72. Will you tell us, as well as you can recall, what transpired at that conference? A. As far as the use of fuels and lubricants were concerned; petroleum products as a whole, we were very short of gasoline and of strategically located gasoline stations.

The Commissioner: This was in June?

The Witness: Yes. I suggested that the oil companies try to make available a certain percentage of their space for us and, furthermore, that we could figure that we would have a certain percentage of their stocks available at all times. As I remember it, it was agreed at that time that the oil companies would keep not less than 50 per cent available to us all the time.

By Mr. Barnes:

136 RXQ73. At whatever stocks they might have? A. No, the rated capacity. Now, that was true not only in Pandacan but also throughout the provinces, in the distribution centers, and into the local filling stations.

RXQ74. Was anything said that you can recall about the facilities of the oil companies? A. What do you mean, sir?

RXQ75. About the use by the Army of the facilities of the oil companies in the event it became necessary to draw on them?

Mr. Kissam: This is the June meeting?

Mr. Barnes: Yes.

A. I can't recall it. We talked about the thing very generally, and minutes were made. I don't want to say that something definite was put down.

RXQ76. You said the next meeting of this type you attended was on December 20th, 1941? A. About that date, yes, sir.

RXQ77. Who called that meeting? A. That was called by General Drake and held at San Beda College, which was the Headquarters of the Department Quartermaster in Manila.

RXQ78. Who was present at that meeting, if you recall it? A. All of us interested in the use of petroleum products; Colonel Rogers, Colonel Versina, Colonel McConnell, General Drake and myself, that I can recall. I am not sure whether Colonel Kramer was there. We also had some civilian employees there.

137

RXQ79. Was Colonel Ward there? A. I don't believe he was. I am not sure, though. He could have been interested, of course. He was in charge of the Army Transportation Service. The representative of the oil companies at that time was Mr. Coleman.

RXQ80. Was he the only one there for the oil companies? A. The only one I remember.

RXQ81. He was an employee of Asiatic Petroleum? A. I don't know, but he seemed to be spokesman for the oil companies and acted as a liaison between the Army and the oil companies.

RXQ82. What transpired at that meeting, if you recall it? A. I asked at that time a plan be put in operation which had been talked of before—in addition to having the facilities of the oil companies made available to us, that we load them up in what we called lorchas. I don't know how to describe it, except a tremendously oversized canoe. Anyway, you could put about fifteen or twenty tons in it, petroleum products, motor transport supplies, and we shoved those into the river and put them up around Laguna de Bay. You could call them sort of floating service stations. That was my particular interest in the matter and that is what I can remember the most.

138

RXQ83. Was anything of that type undertaken after that meeting? A. How many were sent out I don't know, but I do know that one actually arrived over on Bataan and several others were seen floating around, and gotten lost.

RXQ84. The military situation changed very rapidly shortly after that, I take it? A. Very rapidly.

RXQ85. Do you recall being present at any other conferences with representatives of the oil companies? A. Yes, sir, starting about February, 1941, right on up to June or July, we were in constant cooperation with the oil companies.

RXQ86. That was in connection with the development of the War Plans? A. Yes, sir.

RXQ87. You were, during that period, engaged in developing a plan for motor transport which was not
139 approved by higher authorities, were you not? A. That is true.

RXQ88. And it was in connection with that development that you were discussing the matter with them? A. I might say, however, the plan was not approved by higher authorities but accepted as a plan by the oil companies and the transportation companies, and if anything worked at all, it was because of that plan.

RXQ89. That plan was as close to your actual operation during the war as anything could be? A. I guess so, yes, sir.

RXQ90. I was not trying to be critical of the plan, but it was in connection with the development of that plan that you were having these conferences with them? A. Yes, sir.

RXQ91. Was anything said during those conferences that you have not already summarized in referring to these other two conferences? A. I don't think so, sir, except we had these two gentlemen who represented the oil companies and anything we wanted they said we could have. The transportation people worked about the same way. They delegated their power of attorney, I guess, to other people; and that was about all there was
140 to it.

RXQ92. Were you at any of the Pandacan Terminal properties subsequent to December 12th, 1941? A. I don't want to say where I was after December 8th and swear I was there. I was in and around so many places that more than likely I was.

RXQ93. Do you have any recollection of what the situation was, with respect to Army activity, at the Pandacan Terminal properties after the outbreak of war, from your own personal observation? A. No.

Mr. Barnes: Nothing further.

Mr. Kissam: That is all.

(Witness excused).

The Commissioner: We will adjourn until 10:00 a. m. tomorrow morning.

(The examination adjourned, at 4:45 o'clock p. m., to Wednesday, July 21, 1948, at 10:00 o'clock a. m.).

142 • • • • •

MARY ALICE CLEMENTS, residing at 1620 Fuller Street, N. W., Washington 9, D. C., a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Kissam:

Q1. Where are you now employed, Miss Clements? A. Quartermaster General's Office, Washington, D. C.

Q2. In what capacity? A. Identification clerk.

143 Q3. Your attendance here is the result of a conversation with someone in my office and then a subpoena, which was served upon you at the request of the head of your department? Is that correct? A. At the request of the legal adviser to the Quartermaster General's Office.

Q4. After that request was made we sent a subpoena down from the Court of Claims, issued by the clerk; is that correct? A. Yes, sir.

Q5. In 1941, where were you employed? A. I was employed for the Department Quartermaster Headquarters, Philippine Department.

Q6. That office was located in Manila? A. In the Port Area, Manila.

Q7. Were you doing some work for General Charles C. Drake, who testified here yesterday? A. Yes, sir.

Q8. At his headquarters? A. Yes, sir.

Q9. What type of work were you doing—secretarial work, or what? A. Clerk-stenographer.

144 Q10. Prior to 1941, how long had you been employed by the Army? A. I was employed by the Quartermaster on the 8th of July, 1938.

Q11. From that time right up through 1941, had your employment by the Army been continuous? A. Yes, sir.

Q12. What was your situation when the Japanese came in, in January of 1942, at Manila? A. When the Japanese came in? You mean, where I lived then?

Q13. What happened to you, were you in an internment camp? A. No, sir, I was never interned.

Q14. But you were in the Philippines all during the war? A. Yes, sir. I came to the States in 1945.

Q15. After your return to the United States in 1945 you continued in the employ of the Army? A. I was on sick leave for six months.

Q16. At the expiration of that, you went back? A. I went back to the Quartermaster General, yes.

Q17. So your employment at the Quartermaster General's office has been continuous since 1938? A. Yes, sir.

145

Q18. From time to time, in 1941, did you have occasion to report—when I say "report", I mean stenographically—meetings which would be called by General Drake at his headquarters in Manila? A. I reported some meetings.

Q19. I said from time to time. A. Yes, sir.

Q20. When you say some of them, you mean the ones you did not report would be reported by other girls? A. Yes.

Q21. What was your method of reporting those meetings? By "method", I mean did you take down every word that was said, or did you make a résumé of what you heard or how did you go about it? A. When I attended conferences they were verbal; I took down everything that was said in the meeting.

Q22. In other words, if General Drake made a statement you would write that down? A. Yes, sir.

Q23. If some civilian who was attending replied to General Drake, you would write down what he said? A. Yes, sir.

146

Q24. After you transcribed your notes, what did you do with them?

Mr. Barnes: The notes or the transcription?

Q25. The transcription? A. They were handed to the General, if he handled the meeting.

Q26. Would they go into your Headquarter's file? A. I don't know where they would go. It all depended—

Q27. On the subject matter of the meeting? A. Yes.

Q28. They were intended to be kept as a permanent record? A. Yes.

Q29. Do you have any idea where those records are now? A. I don't know exactly where the records would be, but I do know; when the Army left the city, I helped burn some papers that we had in the office.

Q30. Actually, there was an effort to burn all records, was there not? A. Yes.

Q31. Do you know whether or not the various notes that

you transcribed reflecting the meetings of General Drake are in existence today? A. I wouldn't know.

147 Q32. In your capacity, did you have access to documents which at that time—by "at that time" I mean 1941—were classified material? A. Yes, sir, while I was working with Colonel Kalakuka.

Q33. You worked with Colonel Kalakuka, too? A. Yes.

Q34. Who was he? A. As far as I recall, he was at one time Plans and Training Officer, and then he was made Executive Officer to General Drake.

Q35. Did you have any knowledge of a so-called Orange Plan? A. Yes, sir.

Q36. What was the Orange Plan? A. It was a plan of defense in case of war.

Q37. You were here yesterday, when you heard General Drake testify? A. Yes, sir.

Q38. The plan that he described, is that the plan that you call the Orange Plan? A. Yes, sir.

Q39. Do you recollect attending a meeting called by General Drake and attended by representatives of the

148 commercial oil companies who were doing business in the Philippine Islands, at which the representatives of the oil companies were advised that the Army was taking over the fuel supplies and the facilities of the commercial oil companies in the Philippines? A. I don't recall the meeting, because there were an awful lot of meetings going on at that time, but I do recall that a meeting was held.

Q40. When you say a meeting was held, how do you know that? A. If I didn't attend the meeting, another stenographer would; but at some time or another I would either recopy material that had been already typed up or see it in the Orange Plan itself—incorporated already into the Orange Plan.

Q41. If you can, do not say what you would have done. I am trying to find out what you did do. As I understand, was it part of your job from time to time to keep the Orange Plan up to date, and all the information relating to it? A. Yes.

Q42. In other words, as changes were made which affected the plan of defense, did you type up a record of those changes and incorporate it in the file which

149 contained the so-called Orange Plan? A. Yes.

Q43. Do you recall typing up—I am not asking you whether you attended the meeting or not—and placing in the Orange Plan folder information relating to a meeting

called by General Drake at which the oil companies were advised that the Army was taking over their fuel supplies and facilities in Manila? A. Yes, sir.

Q44. You do recall that? A. Yes, sir.

Q45. Am I correct in understanding your testimony that you do not recall whether you actually attended the meeting or not; is that it? A. That is right.

Q46. But you are positive that you did type up the confirmation of the meeting; is that right? A. Yes.

Q47. Based on your own personal observation in December of 1941, do you know whether or not the Army took over the fuel supplies and facilities of the commercial oil companies in Manila? A. Yes, sir.

150 Q48. How do you know that? A. Personal observation.

Q49. What is your best recollection as to the time when you made that observation? A. Immediately after the war.

Q50. The war started on December 8th? A. Yes, sir.

Q51. What is your best recollection as to when you made this observation? A. I would say two or three days after.

Q52. After December 8th, 1941? A. Yes.

Q53. Do you have any personal knowledge as to any gasoline stations, service stations, which were owned by the Caltex Company (Philippines), or at least had signs on them which indicated they were owned by Caltex (Philippines), in Manila?

Mr. Barnes: To clarify this, I would like to know whether this petition includes any claim for taking of filling stations, or service stations?

Mr. Kissam: My recollection is that Action No. 5 does not, but I think it is relevant because it corroborates and supports the general plan, as stated by the prior wit-

151 nesses. To answer your question directly, there is no claim in this action as a result of the taking and use of the filling stations.

Mr. Barnes: I object to it, then, it being immaterial and irrelevant, your Honor.

The Commissioner: Objection overruled.

Mr. Barnes: Exception.

(Question read).

Mr. Barnes: I object further there because of the fact that we will get now into the collateral question as to whether Caltex owned the stations or whether they were owned by persons operating them. The mere fact that a station has a sign on giving the name of an oil company

does not mean that the oil company owns the station. We may get into a question of takings from an entirely separate individual here.

Mr. Kissam: If that is the basis of the objection, I have stated to the Court the only purpose of offering this was as corroboration of witnesses. We are not going to prove in this action whether the stations were owned by Caltex or whether they were run by individuals under contract with Caltex. I am not going into that, if that is the basis of your objection.

152 The Commissioner: Objection overruled.

Mr. Barnes: Exception.

(Question 53 read).

A. I knew of one, sir.

Q54. Where was the one you knew? A. At the Rotunda.

Q55. Did you know of any on Taft Avenue? A. I knew there were several stations, but I could not recall to what companies they belonged.

Q56. The one you recall, did it have a Caltex sign on it? A. I remember that because I did go to that station on my way home from work, when I was working in San Beda.

Cross Examination

By Mr. Barnes:

XQ57. Miss Clements, you said you were in the Department Quartermaster's office, is that right? A. Yes.

XQ58. General Drake was not the Department Quartermaster, was he? A. He was when he first came out to Manila.

XQ59. When you said that you attended conferences called by him, do you mean that you did that during the period when he was Department Quartermaster? A.

153 Yes, sir, then and after.

XQ60. After, you still did? A. When he used to come through the office and carry on meetings, I used to attend them.

XQ61. So that would have been from the time he first was made Department quartermaster right straight through to the fall of Manila? A. Yes, sir.

XQ62. You referred to this as an addition to the Orange Plan, relating to the oil companies. What was the date, approximately, when you made that; was that made in June or July of 1941, or in December of 1941? A. No, I would say that was around the middle of 1941.

XQ63. You mean that would have been made around June or July of 1941? A. Yes.

XQ64. Will you tell us, as accurately as you can recall it now, what that said? A. Well, it was some agreement that they had come to, the Army and the oil companies, that they would take over all the facilities and gasoline.

XQ65. What do you mean by facilities, what did it say with respect to taking over facilities, if you can re-
154 call? A. I mean anything the oil companies did have that the Army would have to use in case of war.

XQ66. Did it say "take over" or did it say "use", do you recall that? A. I couldn't be specific on that, I don't recall.

XQ67. Was this thing that you described as the "Orange Plan" the War Plan for the Philippine Islands, for the defense of the Philippines? A. I believe it was.

XQ68. Do you know whether copies of that war plan were sent to Washington? A. I have no knowledge.

XQ69. When you made these additions to the war plan, how many copies did you type? A. As many as Colonel Kalakuka would ask me to type. If he told me to make one original, I would make one original.

XQ70. Do you recall whether his instructions were usually to make an original or whether you made additional copies? A. I couldn't tell you, sir.

XQ71. You cannot remember that at all? A. I cannot.

XQ72. You remember the text of what you put in there but you do not remember any other thing about it at
155 all? A. That is right. We were working on scout rations and everything else at the same time.

XQ73. Do you remember the substance of everything you typed during that time? A. I would remember things on water transportation, motor vehicles, taking over motor vehicles.

XQ74. When did you type things with respect to the taking over of motor vehicles—in June or July of 1941? A. Around that time, too, sir. I was working as a stenographer in an Administrative pool, but I was detailed with the different divisions if they needed typists. So I was circulating throughout the office there. But later on they did assign me definitely to Colonel Kalakuka.

XQ75. What do you mean "later on"? When? A. I would say around the middle of 1941.

XQ76. Do you recall whether this document that you typed up just used the word "facilities" or did it use some other term? You said it referred to taking over the oil and

the facilities. Is the word "facilities" the word that was used or did it say something else? A. I believe it was "facilities".

XQ77. Did it say "distributing facilities, storage facilities, transportation facilities", or was it just the simple
156 word, "facilities"? A. Just the simple word, "facilities".

XQ78. You said that you knew from personal observation that shortly after the outbreak of war the Army took over the fuel supplies and facilities of the oil companies. Were you ever at Pandacan after the war broke out? A. No, sir.

XQ79. What do you mean by "personal observation", then? A. Well, I was employed as a civilian and I could not get gasoline except through a permit from the Army. Colonel Kalakuka got that for me—where I could go to a gas station and get gasoline to come to work—because I was staying at that time at Santa Mesa.

XQ80. President Quezon issued a proclamation limiting the use of gasoline prior to that date, hadn't he? A. I don't recall.

XQ81. That was all you meant, that you had to get a permit from the Army to get gasoline; is that right? A. Yes.

XQ82. That was the only thing you had in mind when you said that the Army had taken over the fuel supplies and facilities of the oil companies? A. Yes, sir.

157 XQ83. That you had to get this permit in order to get gasoline yourself? A. That is right.

XQ84. That merely said that you were employed by the Army and were entitled to so many gallons for driving to and from work? A. Yes, sir; and they gave me a placard to be placed on the car.

XQ85. To show it was engaged— A. For the use of the United States Army.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Kissam:

RDQ86. This record that you typed up, you are quite positive that that contained the language, in substance, that the Army was taking over the fuel supplies and the facilities of the commercial oil companies?

Mr. Barnes: I object to the form of the question, your Honor.

The Commissioner: Sustained.

RDQ87. There has been some question raised—I do not want to confuse you—as to what you observed and what you read or typed. Mr. Barnes has asked you if when you
158 used the word "observed", in relation to taking over facilities, it was something you saw or whether you meant only that you got the permit for gasoline. I am not talking about that. I am going back to these papers that you typed up regarding the Orange Plan. Will you state again, please, just what your best recollection is as to the language which was contained in the report of the meeting called by General Drake which was attended by the oil companies; just tell me once again, what did it say? A. That the Army would take over complete control of the facilities and gasoline.

RDQ88. Of the oil companies in Manila? A. Yes.

Recross Examination

By Mr. Barnes:

RXQ89. Is it your recollection that it said all of the oil? A. Yes.

RXQ90. Not half of the oil? A. "Complete control", I remember that, because it was during the war. When we took control it was during the war.

RXQ91. I am trying to get this straightened out in my own mind. You said you typed this up in the middle
159 of 1941, didn't you? A. Yes, sir, that was the plan at that time—that, in case of war, the Army would take over complete control. But then, in 1941—I do know we took it over.

RXQ92. Because you had to get this permit from Kalakuka? A. Yes, sir.

RXQ93. Were these things added to the Orange Plan just as transcripts of what took place at the meeting, or did you add a summary to the file? A. You mean whether they made it briefer?

RXQ94. Did they put in the complete transcript of the meeting or did they put in some summary that was made? A. In some cases they put in a summary and in some cases they put in the complete meeting.

RXQ95. In this case, do you know which it was? A. I would say it was a summary.

RXQ96. Who prepared the summary, would you know? A. I don't know, but it was handed to me at the time I was working with Colonel Kalakuka.

RXQ97. All you remember is that somebody, whom you do not remember at the present time, handed you a summary which was to be typed and to be put in the files? A. It would have come from Colonel Kalakuka himself.

160 RXQ98. You would not know whether he prepared it or not? A. I wouldn't know.

RXQ99. Do you recall ever having seen a verbatim transcript of what took place at that meeting? A. I know I saw verbatim transcripts of meetings.

RXQ100. But you do not know whether you saw one for that meeting? A. I wouldn't know.

Mr. Kissam: Which meeting are you talking about?

Mr. Barnes: The meeting that resulted in this so-called agreement, which she said was about the middle of 1941.

Mr. Kissam: That is not the way I understood the testimony, but I will take that up in a minute.

RXQ101. Let me clarify that. You said, did you not, that you put this document relating to this agreement into the files for the Orange Plan in about the middle of 1941? A. Yes.

RXQ102. Did you make any other additions to that file that you can recall, relating to the oil companies, subsequent to that date? A. If Colonel Kalakuka asked me to, I would.

RXQ103. Do you recall any now? A. No, sir.

161 RXQ104. That is the only one you can recall? A. Yes, sir.

RXQ105. That was about the middle of 1941? A. Yes, sir.

RXQ106. Did that refer to a meeting that had been held between representatives of the Army and the oil companies? A. Yes, sir.

RXQ107. Do you recall having seen the verbatim transcript of the minutes of the meeting that was referred to in that summary? A. In 1941?

RXQ108. Yes. A. I wouldn't recall.

Redirect Examination

By Mr. Kissam:

RDQ109. Miss Clements, I understood on direct examination that the meeting we were talking about took place in December of 1941, not June. Now Mr. Barnes has asked you if the meeting was in the middle of 1941. I thought you were talking about a meeting called by General Drake in

December, 1941, before the war started. A. I knew he called a meeting in December.

162 RDQ110. These notes that you typed up, which contained the language that at a meeting this arrangement had been made to take over the fuel supplies and facilities, can you tell me whether that was after the war started or was it many months before the war? A. Before the war there was an agreement made. Then, after the war started, we just took it over.

RDQ111. Which of the minutes that you typed up, either from your own notes or from someone else's notes, related to the meeting between the oil companies and the Army; was that a meeting in the middle of December or a meeting after the war started?

Mr. Barnes: The middle of December is after the war started.

RDQ112. Apparently there were several meetings? A. Yes, sir.

RDQ113. I am trying to find out whether the reference that you have made to t' taking over relates to the early meetings, say in the middle of 1941, or whether it relates to a meeting called by General Drake after December 8th, 1941? A. After December 8th, 1941, General Drake did call a meeting.

163 RDQ114. Did you transcribe or take any of the notes of that meeting? A. I couldn't recall if I took them, but I do know I saw them.

RDQ115. Do you recollect what you saw? A. I recollect the substance.

RDQ116. This is December, 1941, not the middle of 1941? A. Around the middle of December, 1941.

Mr. Barnes: I object to this. A witness who has seen a summary or notes of somebody else of what transpired in a meeting is not competent to testify to it, especially since we have people present who have attended the meetings.

Mr. Kissam: We are not offering her testimony as to the truth of the statement. I am offering her testimony as to the existence of the statement.

The Commissioner: Why is the existence of the statement material?

Mr. Kissam: It is confirmation of the meeting and of what took place at the meeting.

The Commissioner: But you have witnesses here who were at the meeting.

Mr. Kissam: That is correct. But now I have a wit-
164 ness from the clerical or recording side who has testi-
fied that in the course of her official duties she had seen a written résumé of a meeting, which went into an official record of the Army in Manila in 1941, and which, as far as we know, was destroyed by deliberate burning before the Japanese came in.

The Commissioner: Suppose we had witnesses who were at the meeting and we had records, would both be permissible to prove what occurred at the meeting?

Mr. Kissam: I think so.

The Commissioner: Why?

Mr. Kissam: Because of the classification of a written record—it is a record made of the ordinary course of business, business of the Army. It would certainly be admissible under our New York State rules and it would be admissible in the Federal Court, because it is a record made in the official course of business, a record made at or about the time of the transaction. It is a record made by a person whose duty it is to make that record. I think it is admissible even without identification, if you can establish it is a record of that type.

Now here we have a witness, not an interloper, but
165 whose job it was, apparently, to keep up this file on the Orange Plan. She is not testifying of her own personal knowledge; she is simply saying, "This is a record that was given to me and this is in substance what I recollect the record said."

That is an official record. If that record was here, I think I could offer it in addition to the testimony of the people who participated. Suppose I have a bookkeeper and he or she testifies as to certain transactions that they know about, I may at the same time offer the books of account reflecting those transactions.

The Commissioner: I have serious doubt about it, so I will give you the benefit of the doubt.

The objection is overruled.

Mr. Barnes: It seems to me that what Mr. Kissam has said, as you say, is perhaps on the borderline; but where we have a case of a record which is not available and are producing secondary evidence with respect to the contents of that record, not from the person who prepared it but from somebody who says that they saw it at some point, some six and a half years ago, I think we have an entirely different question and one on which the thing falls fairly

clearly on the other side, and the testimony would
166 not be admissible.

The Commissioner: I have doubts about it and I will give the plaintiff the benefit of the doubt.

Mr. Barnes: Exception.

RDQ117. I am talking now only of after war started, in 1941; as I understand it, you do not remember whether or not you attended the meeting called by General Drake, but you do remember seeing either a verbatim transcript or a résumé of what transpired at the meeting? A. Yes.

RDQ118. You also remember that the meeting called by General Drake was attended by representatives of the oil companies? A. Yes.

RDQ119. I want you to state what is your best recollection as to the substance of what you read reflecting what transpired at the meeting after December 8th, 1941. A. That we were going to take over the facilities and gasoline of the oil companies.

RDQ120. That is what you read in relation to the meeting that took place after December 8th, 1941? A. That is the substance of it.

167 Recross Examination

By Mr. Barnes:

RXQ121. What did you do with this document that you saw? A. I turned it over to Colonel Kalakuka.

RXQ122. Where did you get it? A. From Colonel Kalakuka.

RXQ123. You mean he gave it to you to read? A. No, he gave it to me to retype. Some of this work, if it wasn't too clean it was retyped.

RXQ124. Even in December of 1941? A. Even in December of 1941.

RXQ125. You do not know whether that went into the Orange Plan or not, do you? A. No, sir.

RXQ126. You do not know what happened to it at all? A. As far as I was concerned, I gave it to Colonel Kalakuka.

RXQ127. You do not know whether he prepared the document or not, do you? A. I wouldn't have any knowledge.

Mr. Barnes: Your Honor, I further object and move to strike this out on the ground there is no evidence that this is a document prepared in the regular course of busi-
168 ness.

The Commissioner: What is the document—do you recall now the document?

The Witness: I recall having typed up something pertaining to this meeting that went on.

The Commissioner: But you do not know who made it or why?

The Witness: No, sir. It was given to me by the Colonel.

Redirect Examination

By Mr. Kissam:

RDQ128. Colonel Kalakuka, as I understand it, was the Executive Officer of General Drake in 1941; isn't that correct? A. Yes, sir.

RDQ129. Did he have any other occupation, other than that of Army officer, in 1941? A. No, sir.

RDQ130. The material that he handed to you related to a meeting of which you had personal knowledge, didn't it? A. Yes.

The Commissioner: Objection overruled; motion 169 denied.

Mr. Barnes: Exception.

Recross Examination

By Mr. Barnes:

RXQ131. Why was it you saved to redirect examination any reference to this document you typed in December of 1941?

Mr. Kissam: That is objected to as containing an assumption which is not accurate. On direct examination she testified as to December, 1941.

Mr. Barnes: There may have been an omission in your notes or recollection, but in direct examination she made no reference to the date of the addition to the Orange Plan.

The Commissioner: I agree with Mr. Barnes. I wondered why that was not brought out and I waited to see if it would be brought out on redirect, or I would have taken it up myself.

(Record read).

The Commissioner: Do you understand the question?

The Witness: No, sir.

By Mr. Barnes:

RXQ132. As you just heard, from the reporter's reading of part of the direct examination, you originally, on your

direct examination by Mr. Kissam, made no reference
170 to the date that you made this addition to the Orange Plan. When I asked you about it, on cross-examination, you referred only to an addition which you made in the middle part of 1941, about June or July, and it was not until just a question or two ago, by Mr. Kissam, that you first mentioned anything in December of 1941. Why hadn't you mentioned that earlier? A. Well, sir, the typing I did in December I did not incorporate into the plan.

RXQ133. That was not part of the Orange Plan? A. I didn't put it in there. I recall that the one in the middle of 1941 I saw in the bound volume itself.

RXQ134. Did anybody else make additions to that volume, other than you? A. Yes, sir.

RXQ135. Who? A. The other stenographers.

RXQ136. You do not know whether this document you saw in December of 1941 went in there or not? A. I couldn't swear to that. I gave—all the work I typed up in December, 1941, I did not incorporate into the plan, I gave it personally to Colonel Kalakuka, because at that time I don't know where the plans were.

RXQ137. Were both of these documents that you
171 saw—the one in the middle of 1941 and the one of December, 1941—summaries, or were they verbatim transcripts; do you recall? A. I think the one in the middle of 1941 was a summary.

RXQ138. What about the one in December, do you recall whether it was a verbatim transcript or summary? A. I believe that was verbatim. At that time, practically all the typing we did, the officers didn't have time to sit down and make a summary, so they were just incorporated.

RXQ139. So that when you tell us of what it said, you are summarizing the entire context of this verbatim transcript; is that right? A. Well, I am trying to recollect, or I am recollecting the summary thereof.

RXQ140. There was not a summary for the one in December? A. No, sir, I am just making it—I can't remember, word for word, everything that did go into the document itself.

RXQ141. What you are doing is giving us a summary of what you remember the substance of it was? A. That is right.

Mr. Barnes: I object to this on the further ground that, since all that the witness saw was a verbatim transcript of a meeting, she should be required to state to her best recol-

lection who said what, as any person present at a
172 meeting would have to do, rather than present her opinion as to what the sense of the meeting was.

The Commissioner: You are entitled to have that developed. Do you want to develop that on cross-examination or return to direct examination?

Mr. Barnes: I think it is a fatal objection to her entire testimony. A person who was present at the meeting would be required to state what the various participants said. Similarly, it seems to me, where we have secondary evidence from a verbatim transcript of the meeting, the same rules should apply and the witness should not be allowed to give a personal summary. I think it is even more important where we have got evidence of a non-participant, based upon a transcript which she saw.

The Commissioner: The ruling on the objection is deferred until we see what the witness can tell us as to the exact context of the document.

Mr. Kissam, will you resume your examination?

Redirect Examination

By Mr. Kissam:

RDQ142. You are quite clear, from your examination by Mr. Barnes, that the meeting in the middle of 1941
173 went into the Orange Plan in the form of a summary which was physically made a part of the Orange Plan file? A. I would say it was.

RDQ143. Incidentally, that Orange Plan was in a bound volume, was it not? A. Yes.

RDQ144. Let us forget the middle of 1941 and talk only about after the war started. You stated that you personally knew General Drake called a meeting with the oil companies in December, 1941? A. Yes.

RDQ145. How did you know that? A. On account of this paper that I typed up.

RDQ146. When you say "typed up", was it a retyping? A. Yes, sir, retyping.

RDQ147. You are sure of that? A. Yes, sir.

RDQ148. About how many pages would you say—was it a long document or a short one; do you have any recollection at all? A. I couldn't say.

RDQ149. Did it recite the names of the persons who
174 attended the meeting? A. The one I typed up? Yes, sir.

RDQ150. Do you recollect the names of the persons? A. Attending the meeting?

RDQ151. Yes. A. I know General Drake was there, because he opened the meeting. That is as far as I recall.

RDQ152. You remember reading his opening remarks? A. He opened the meetings.

RDQ153. Did you read the document through? A. I read it as I typed it.

RDQ154. In reading it as you typed it, did that enable you to understand the content of the document? A. Yes, sir.

RDQ155. When you read the document as you typed it, at that time—not now, but at that time—was the entire content clear to you? A. Yes, sir.

RDQ156. You thoroughly understood it and comprehended it? A. Yes, sir.

RDQ157. Did you see in the document any statement, in words or substance, that the Army was, as of that time, namely, the time of the meeting, taking over the fuel supplies and facilities of the commercial oil companies in
175 the Philippines?

Mr. Barnes: I object to the form of the question.

The Commissioner: Sustained.

Mr. Kissam: I am putting that to save time.

Mr. Barnes: I would rather have you do it in the normal way.

The Commissioner: This whole objection is based on the rules of evidence, not on a time basis.

RDQ158. What is your best recollection as to the contents of the paper that you retyped, from beginning to end? What do you recollect about it? You only told us about one thing; what else do you recollect about it? A. I don't quite get that.

The Commissioner: What we want is for you to tell us if you have any recollection whatever of what you typed. Do you recall any sentence or sentences so that you can tell us where one man said thus and such and another man said so-and-so?

The Witness: Of all the people that were there?

The Commissioner: Just anything you can remember out of that document. Can you remember excerpts or the statements that people made? That is what we want to get at.

176 The Witness: All I would recall, any part that we were concerned with, the Army itself?

The Commissioner: What we want is what you can remember.

The Witness: You mean of the meeting in December, 1941?

The Commissioner: Of this paper that you typed of the meeting of December, 1941.

The Witness: General Drake said we were going to take over the facilities of the oil companies.

The Commissioner: In the opening of the meeting?

The Witness: During the meeting.

By Mr. Kissam:

RDQ159. Do you remember reading that specifically? A. Yes, sir.

RDQ160. Do you remember reading that the person who made the statement was General Drake? A. Yes, sir.

RDQ161. Do you remember anything else in it? A. What do you mean by anything else?

RDQ162. In addition to that, are there any other facts that you remember in it, relating to any other part of the meeting?

177 The Commissioner: Can you remember any other statement, can you put yourself back to the time you were typing and remember anything else that was a statement somebody made or a question they asked, or anything that you transcribed? You see, we differentiate between what people said and the way you remember it. We want the sense it made to you. If you can remember the exact words—

The Witness: I couldn't remember the exact words General Drake stated, but I could say the résumé thereof was that the Army was going to take over.

By Mr. Kissam:

RDQ163. Suppose you remember reading that General Drake said "A, B, C and D". You already testified to what you recollect his statement was. Let us assume Colonel Kalakuka said, "I wish somebody would open a window. It is awfully warm in here." That is what we want you to tell us, even though it is unrelated to the Orange Plan. In other words, the Court and Mr. Barnes are testing your recollection as to how much you remember and why you remember just one part of it.

Mr. Barnes: I think it goes beyond that, Mr. Kissam, but I will let you stand in that position for a moment.

RDQ164. Do you remember any other thing that
178 was in the report of the meeting? A. I don't understand.

RDQ165. We are taking testimony right now. I am saying something; his Honor, the Commissioner, is saying something; Mr. Barnes is saying something. Now, if you were reading this, certain things might stay in your mind, right? A. Yes.

RDQ166. In substance, you were reading in December, 1941, a transcript of a meeting? A. Yes.

RDQ167. Very much like this hearing? A. Yes.

RDQ168. All we want you to do—you said you remember one thing General Drake said at the meeting, namely, that the Army was going to take over the fuel supplies and the facilities. Now, do you remember what anybody else said, regardless of the topic, as long as it took place at the meeting?

Do I make myself clear? A. No, sir, I don't get it. You mean whether it was agreed upon?

RDQ169. You are concentrating on one thing, namely, what related to the Orange Plan. We now want you to tell us anything else that the report of the meeting con-
179 tained, even apart from the Orange Plan. Do you remember who else was there besides General Drake, according to the report? A. I imagine some officers were there.

RDQ170. We do not want that. We want to know what you remember. I assume, in the first place, there was a list of the people who attended the meeting, wasn't there? A. No, sir, it would start out with whoever would open the meeting and then exactly what he would state.

RDQ171. It would say "General Drake", and what he said; and the names of the people, only, who spoke would be shown? A. Yes.

RDQ172. And their names would precede what they said? A. Yes.

RDQ173. After General Drake spoke, do you remember who spoke next? A. I couldn't swear to it, sir.

RDQ174. Do you remember if anybody said anything besides General Drake, according to the transcript you read? A. I would say yes, sir.

RDQ175. But you do not remember who they were? A. I couldn't remember who would say it or what they said.

RDQ176. All you remember is what General Drake said? A. Yes.

RDQ177. The transcript that you got came from the Executive Officer, Colonel Kalakuka? A. Yes, sir.

RDQ178. He gave it to you to retype? A. Yes, sir.

RDQ179. You returned it to him? A. Yes, sir.

RDQ180. Was it on official Army paper—I mean the paper used by the Army for making reports of meetings? A. I would say it was in plain white.

RDQ181. But the same way that you would type up any other report of a meeting? A. Yes—double space.

RDQ182. The same form and everything? A. Yes.

RDQ183. That you have been doing in the course of the years you have been in the Army? A. As far as typing drafts, yes, sir.

RDQ184. The method of reporting this conference was the method of reporting all conferences that you knew about? A. Yes, sir.

Mr. Barnes: I object to the form of the question as leading.

The Commissioner: Objection sustained.

RDQ185. Was there any difference in the form of the report of this meeting than in the form of the report of any other meeting that you personally typed up? A. Any meetings typed up were typed up in plain white paper, double spaced.

RDQ186. Was there any difference between the form of this report and any other report? A. No, sir.

RDQ187. Exactly the same? A. Yes, sir.

RDQ188. You handed it back to Colonel Kalakuka? A. Yes, sir.

RDQ189. Do you recall specifically that certain statements were charged to General Drake as having been made at the meeting? A. Yes.

RDQ190. You read that? A. Yes, sir.

RDQ191. I want you to tell me what you recollect reading. If you cannot tell it to me in the language, tell it to me in substance—what General Drake said.

Mr. Barnes: May I ask at this point whether your recollection is confined solely to the opening remarks made by General Drake or whether you remember other statements made by General Drake in the course of the meeting?

The Witness: I can't recall other statements.

Mr. Barnes: You just recall his opening statement?

The Witness: That we were going to take over.

By Mr. Kissam:

RDQ192. Can you remember the language? Did it start off, for example, by General Drake saying, "I am sorry to get all you people in here, but war is on", or do you remember anything about it at all? Can you remember anything about the specific language that General Drake used? A. No, sir, I couldn't remember the specific language he used.

RDQ193. But you are quite positive that you remember the substance? A. Yes, sir.

RDQ194. Will you state the substance? A. The substance thereof is what I said before.

RDQ195. Namely? A. That he was going to take over the control of the gasoline facilities of the oil com-
183 panies.

Recross Examination

By Mr. Barnes:

RXQ196. Do you recall whether Colonel Bersina was credited with making any statements at that meeting? A. Colonel Bersina was in the left wing, across the aisle from Colonel Kalakuka's.

RXQ197. Do you remember whether any statements were credited to him in this transcript that you typed, whether he said anything at that meeting? A. I couldn't swear to it.

RXQ198. Do you know whether Colonel Kalakuka said anything at the meeting? A. He might have.

RXQ199. You do not recall? A. All I can remember—like I can remember subject matters in other conferences that were held, as a whole.

RXQ200. The same would be true for Colonel McConnell, I suppose? A. I didn't work with him.

RXQ201. If he said anything in the meeting, it would appear there? A. Yes.

RXQ202. And you do not recall whether anything
184 did or not? A. I can't recall.

RXQ203. Do you recall whether there was a Captain Morrell, from the Navy, who made any statements at that meeting? A. The name is not familiar, sir.

RXQ204. Do you recall whether anything was said at the meeting about a proclamation issued by President Quezon, freezing gasoline? A. I don't know whether it was in that document. I would get confused between the papers and all that, as far as proclamations, I couldn't swear it was in that document.

RXQ205. You do know there was a proclamation, but you do not know whether it was in that document or not? A. That is right.

RXQ206. Do you recall now whether anything was said in that document of the manner in which the Army would sign for gasoline that was delivered to it, or pay for it? A. I wouldn't be able to say.

RXQ207. Do you recall whether anything was said about the placing by the Army of a control officer at Pandacan? A. I wouldn't.

RXQ208. Do you recall whether anything was said about service stations in the course of that meeting, as opposed to Pandacan? A. I believe there was something said
185 about service stations.

RXQ209. Do you have any recollection now who said it, whether it was some representative of the companies or some representative of the Army? A. I couldn't truthfully say, but I would say it was part of the document.

RXQ210. Do you recall what was said about service stations—you just recall something was said? A. Something was said.

RXQ211. Do you recall what it was? A. You mean, that would—

RXQ212. What the statement was about the service stations. A. That we would send our transportation in there, too.

RXQ213. I am not sure I understand that. You mean, send your transportation— A. We would use the service stations.

RXQ214. Do you recall if any representative of any of the oil companies said anything at that meeting?

Mr. Kissam: Would you have any objection to advising the witness that these questions are addressed solely to what she read in this paper? I am afraid she might be getting off on general recollection.

186 Mr. Barnes: That was my intention, to address my questions solely to the document.

The Commissioner: All these questions are directed solely to what was in this document. We are trying to find out what you remember about what was in this document that you typed in December, 1941.

By Mr. Barnes:

RXQ215. My question was whether that document indicated that any representative of any oil company said

anything, or was it all Army personnel talking? A. Oh, no, there were representatives of the oil companies.

RXQ216. They must have said something, because you would not have known they were there if they did not say something? A. That is right.

RXQ217. Do you have any recollection as to what their names were? A. No, sir; I couldn't remember that.

RXQ218. Do you remember whether Mr. Coleman was one of them? A. I wouldn't know that, but I do know Mr. Coleman was in San Beda quite often.

RXQ219. But you would not remember whether he
187 was at the meeting or not? A. I wouldn't remember.

RXQ220. What is the difference between your recollection of what General Drake said in this verbatim transcript that was made sometime in December of 1941 and the summary that was placed in the Orange Plan in the middle of 1941? A. The summary in the middle of 1941 was what would happen in case of war.

RXQ221. It referred to the fact that the Army would, in the event of war, take over the gasoline and use the facilities of the oil companies; is that right? A. Yes, sir.

RXQ222. This one in December, 1941: General Drake's statement in December, as you recall it, said the Army was going to immediately take over the gasoline and use the facilities for its distribution; is that right? A. Yes.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Kissam:

RDQ223. On the last question, Mr. Barnes limited his question by asking you if the document, in December, 1941, was that the Army would take over the fuel supplies and use their facilities for distribution. Was there any
188 such limitation? He has included in his question the words, "use the facilities for distribution." Was there any such limitation, as you read General Drake's remarks? A. I would say that he was taking it in full.

Mr. Kissam: That is all.

By the Commissioner:

Q224. Do you recall whether General Drake made any further statements about taking other facilities or portions of Manila, establishments or anything? Was this whole discussion confined to oil; or did General Drake say the

Army is taking over, implying it was taking over everything in the city? A. Oh, no, he was not taking over everything in the city, sir.

Q225. Would he indicate what he was or was not taking over? A. No, sir.

By Mr. Kissam:

RDQ226. I understood you to say this was a meeting of oil representatives. Were there any representatives of any other trades or businesses? A. No, except the officers.

RDQ227. Weren't there meetings with bus representatives? A. Buses and water transportation, steamship lines.

189 RDQ228. In other words, meetings were called separately? A. Yes.

RDQ229. At the water transportation meeting, I assume they discussed water transportation? A. Yes, sir.

Mr. Kissam: That is all.

The Commissioner: Thank you, Miss Clements.

(Witness excused).

The Commissioner: Let us take a brief recess before the next witness.

(A short recess was taken).

The Commissioner: Let us resume.

Mr. Kissam: Colonel Shanks, please.

JOHN N. SHANKS, residing at 563 Eighth Avenue South, Clinton, Iowa, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Kissam:

Q1. Colonel, what is your Army status at the present time, active or inactive? A. I am retired.

190 Q2. As of what date, approximately? A. September 12th, 1947.

Q3. In 1941, you were on active duty in Manila? A. I was.

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By Mr. Kissam:

Q25. Colonel, what was your primary duty in the Philippines in December, 1941? A. I was Motor Transport Maintenance Officer of the Philippine Department.

Q26. Who was your immediate superior? A. Colonel Michael Quinn.

Q27. The officer who testified here yesterday? A. That is right.

Q28. Colonel, for purposes of the record, would you state your serial number? A. 0-219050.

Q29. Going back to what I started to ask you about, did you attend any meetings in December, 1941, in Manila, between representatives of the commercial oil companies and the Army? A. I did not.

Q30. Do you know whether or not in December, 1941, there came a time when the Army took over the control and use of the petroleum products of the oil companies of Manila, and their facilities? A. I was so informed.

Mr. Barnes: I object and move to strike it, your
195 Honor.

Mr. Kissam: I may develop it, if the information came through proper channels I think he is entitled to state that.

Mr. Barnes: I still think it is hearsay.

Mr. Kissam: It is not hearsay if an Army officer is advised by a superior officer that a certain status is going to obtain. I think he has a right to state what he was told by a superior officer as to what was done. That is not hearsay, that is proof of a fact—namely, the fact of what he was told by a superior officer.

The Commissioner: Is this information on which this officer was required to act?

Mr. Kissam: Yes, sir.

The Commissioner: Overruled.

Mr. Kissam: And did act.

Mr. Barnes: Perhaps it would be better if we asked the witness, rather than have Mr. Kissam answer it.

The Commissioner: The ruling was based on the fact that it is always open to you to renew. We cannot tell at this stage what it is.

Q31. You testified that you were advised that the Army had taken over the control of the petroleum products
196 and the facilities of the oil companies in Manila. My question is: Who advised you? A. I was under the

impression that Colonel Quinn advised me—at least, I called his office—but to recall just who told me, I don't. But Colonel Quinn or one of his executives advised me that I would have no trouble securing petroleum products after I moved my organization from port area to Santa Ana Race Track, because the Army had taken over all such operations.

Q32. In other words, you are not sure it was Colonel Quinn. Are you sure, at least, it was an officer of executive rank from whom you would have received information in the normal channels? A. That is right, it may have been Major Stakes or Major Brettell.

Q33. But your Commanding Officer was Colonel Quinn? A. That is right.

Q34. Was it ordinary Army routine for orders to be given to you through Colonel Quinn directly, or in some cases through subordinates of Colonel Quinn? A. That is right.

Q35. Your testimony is that this information came either from Colonel Quinn or from one of his subordinate
197 officers? A. That is correct.

Q36. What were the circumstances under which you were given this information? A. I will have to lead up to that.

Q37. Go ahead. A. We remained as an operating unit—

Q38. When you say "we", whom do you mean? A. My shop, the Fourth Echelon Base Shop of the Headquarters Philippine Department.

Q39. That was a maintenance and repair shop for motor vehicles? A. That is right. We remained as an operating unit in the port area, the original shop, until the 14th—the date may be one day more or less—of December, 1941. Colonel Quinn directed me to evacuate this area and locate the shop outside the Manila area. My junior officers and I decided on the Santa Ana Race Track and the cockpit for the shops and the administrative supply section of the set-up. We immediately started evacuation.

In the course of these orders and directives that were being passed out, I questioned my ability to secure gasoline and oil and petroleum products for the operation of this unit. That was when I was told that I would have
198 no trouble securing those, because the gasoline and oil products of the companies had been taken over and it would be on call at any time I needed it.

Q40. Thereafter, did you have any difficulty in securing petroleum supplies? A. None whatever.

Q41. Where did you secure your supply of petroleum products? A. The supply that was delivered to us at the Santa Ana Race Track was secured from Pandacan.

Q42. Did you ever sign any receipts or anything of that sort for the supply that you received? A. No, I didn't sign receipts. Mr. Lednicky, my immediate assistant, would have handled that as the stuff came in.

Q43. Do you know whether or not any receipts at all were signed? A. I wouldn't say, personally.

Q44. From time to time, did you visit various gas stations for the purpose of drawing gasoline? A. Yes, sir, I was in many of the gas stations in the Manila area and on the North Road, and also on the South Road.

Q45. At these gas stations, did you observe military personnel? A. I observed military personnel at all
199 the gas stations at which I called for gas, but I was under the impression that they were the safety factor, or the security factor.

Q46. Did you have any occasion, for example, to draw gasoline from stations owned by Caltex (Philippines)? A. I did, three different ones.

Q47. Do you remember where they were located? A. One was located on Taft Avenue, the other one was located on the other side of the Rotunda; and, if I am not mistaken, the other one was Padre Faura.

Q48. Did you have anything to do with the taking of motor equipment from the Pandacan Terminal? A. With respect to requisitioning it, I did not. But vehicles that were taken over by the organizations that were getting them were passed through my establishment for a check as to mechanical condition. I know that there was petroleum product handling equipment, a considerable amount of it, that passed through my shop in the Santa Ana district.

Q49. When you said you had nothing to do with the requisitioning, you mean the taking in the first instance? A. That is right.

Q50. Do you know whether or not the Army took over all kinds of tank trucks, stake-trucks and so on? A. I
200 definitely do.

Q51. Are you able to identify any of those trucks as being properties of Caltex, as distinguished from any other oil company's? A. I wouldn't be able to do that, there were too many coming through at the time.

Q52. What is your recollection as to whether or not all tank trucks and stake-trucks available in Manila were taken over by the Army after December 8th, 1941? A. There is

no doubt in my mind, if the truck was in serviceable condition and it was of that character, that it passed through my shop in November and December, 1941.

Q53. In other words, the Army took over every available tank truck and stake-truck that was in Manila and capable of being used, in 1941, during December? A. That is right. And that capability was based on our decision at the shop.

Q54. In other words, you examined it and if it was fit for use the Army kept it? A. My Inspection Department examined it, under me.

Q55. Does that also apply to panel-body trucks? A. Station wagons you are speaking of; I believe we called them station wagons at that time.

201 Q56. Yes. A. We took over any number of those and designated them for use as ambulances. Our duty was to put the Red Cross on the side of the thing in the paint shop.

Q57. The vehicles that you were examining to determine whether they were to be used, they were entirely for Army use? A. Those that passed through my Inspection Department were for Army use.

Cross Examination

By Mr. Barnes:

XQ58. What was your rank on December 8th, 1941? A. December 8th, 1941, I was first lieutenant.

XQ59. You said that you, personally, had taken gasoline from filling stations owned by Caltex. How do you know that Caltex owned the stations? A. The signs are the only thing I knew.

XQ60. There was a sign saying Caltex Gasoline? A. Yes.

XQ61. The station could have been owned by somebody else, but selling Caltex gasoline? A. As far as I know, it belonged to President Quezon; but it had the Caltex sign on it.

(Witness excused).

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202 JOSEPH E. KRAMER, residing at Coupeville, Washington, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By. Mr. Kissam:

Q1. Will you state for the record your serial number? A. O-018291.

Q2. At present are you on active or inactive status? A. Inactive, retired.

Q3. Retired as of what date, approximately? A. February, 1947.

Q4. Prior to the date of retirement, how many years of service have you in the United States Army? A. Approximately thirty-four years.

Mr. Barnes: Your Honor, I would like to examine the witness under the same statute, with the same objection by Mr. Kissam, if I may.

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By Mr. Kissam:

Q18. Colonel, in 1941, what was your duty assignment? A. In January of 1941—meaning the beginning of 1941—I was on duty at Fort Mills, Corregidor, Philippines, as assistant to the Quartermaster.

Q19. Who was the officer in charge of the Quartermaster Department in Manila in April, 1941? A. Colonel, later General, Charles C. Drake.

210 Q20. After April 1st, 1941, what were your duties?

A. That date coincides with the approximate date that I was transferred from Corregidor for duty with the Quartermaster, Philippine Department. I was assistant to Colonel Arthur Parker in the Construction Division of the Department Quartermaster's Office, in the port area in Manila.

Q21. In April, 1941, did you have any personal familiarity with the so-called War Plan for the defense of Manila and the Philippine Islands? A. Prior to coming to Manila I knew the phase with relation to Corregidor, and was partially familiar with the part of the plan which had to do with supply. The plan is a very voluminous document and it is divided in sections and annexes, and when I say I am familiar with the plan, I definitely mean the portion that concerns directly any branch of service and activity.

Q22. When did you arrive in the Philippines, what month? A. My original arrival?

Q23. Yes. A. May 28th, 1939.

Q24. Shortly after your arrival, was there any indoctrination, or any classes of instructions held for the benefit of newly arrived officers at which they discussed the
211 Orange Plan for purposes of familiarization? A. Well, no special classes as such were held. It was the duty of every officer to study the plan when I was on Corregidor. But when I came to Manila for duty, Major Kalakuka conducted classes for all newly arrived officers, and sometimes two or two and a half hours a day, on thoroughly familiarizing all newly arrived officers. At that time I believe there were only two of us who were attending his class. I would say I attended probably five or more classes of instructions.

Q25. Is it proper to state, then, that in April or May of 1941, in so far as the supply features of the so-called Orange Plan were concerned, that you were fully familiar with them? A. I would answer that I was familiar with them.

Q26. Under the Orange Plan, what is your recollection as to the source of petroleum supplies to be used in the event that the plan became effective? A. The Orange Plan, as I knew it and studied it, had for its first source of supply the reserve that the Department was maintaining. I was familiar with that, because at that time all the gasoline in special storage tanks, in tunnels in Corregidor,
212 was considered Department reserves rather than Corregidor reserves.

Other than that and the relatively minor storage facilities that the Army had at its various posts, camps and stations, the stocks in the hands of the oil companies were considered as the reserve; and at that time, I want to add, my principal concern was fuel oil, and I knew at that time what the supply was and just about what we might count on that we could do in the way of obtaining fuel oil—like the power plant on Corregidor, very heavy consumer, ships that had to be fueled, our ships that required fuel.

Mr. Barnes: You say "at that time", what time are you referring to now?

The Witness: Early summer or spring of 1941.

By Mr. Kissam:

Q27. For a moment, will you go back and tell me about what storage facilities, in April or May, did the Army have for petroleum products in the Philippines; were

they extensive or limited, or what? A. Well, I can go further than that and, answer your question, because it came under my division—that was buildings, grounds, land and so forth. I have already mentioned tanks in tunnels, known as the Malinta and Morrison Hill tanks. The Department had about 300,000 gallons there, more or less,
213 very close to the capacity. Small tanks, to the capacity of probably twelve to fifteen thousand gallons total, were available in different installations on Corregidor. The port area and around the motor pools and gas stations had small tanks. Similarly, that existed at Fort McKinley, Fort Stotsenberg and other military installations. They were not storage tanks, as such. In some places, like in the port area, the replenishment had to be made as often as every second or third day. They were rather small and limited in capacity.

Q28. What would you say was the maximum storage capacity for petroleum products that the Army had in April, 1941, in the Philippines? A. All told?

Q29. Yes. A. I wish to confine my answer to the installations on Luzon, because the installations on other islands in there I was not too familiar with. I would say that it was probably less than 500,000 gallons, counting everything and anything that would hold gasoline.

Q30. It is correct, is it not, to say for all practical purpose the source of petroleum products intended to be utilized under the defense plan called the Orange Plan,
214 if the plan ever became active, was to come from the supplies of the commercial oil companies in the Philippines; is that correct? A. That is absolutely correct.

Q31. Colonel, do you recollect attending a meeting called by General Drake some time, we will say, in the middle of 1941, at which the representatives of the various oil companies were present? A. I definitely do.

Q32. When would you fix the time, what would your best recollection be? A. Early in June, 1941.

Q33. Who presided over the meeting? A. The Colonel, later General Charles Drake.

Q34. Was the meeting attended, also, by representatives of all of the oil companies that had supplies in the Philippines and facilities there? A. Several gentlemen were introduced by name later, after the opening remarks by Major Kalakuka, and giving their names and what firms they represented. As I visualize them now, as they were sitting there, there were not less than five and probably more.

Q35. Are you able to identify any of the repre-
215 sentatives as being a representative of Caltex (Philippines), Inc.? A. No.

Q36. In other words, you do not know who they were—they were representatives of the oil companies. A. I knew most of them by sight. At that time I had been in Manila less than sixty days and had had no opportunity of meeting them personally or socially.

Q37. Will you state your best recollection of exactly what transpired in the meeting, in so far as you can? I would like to have you say that General Drake said this and Colonel So-and-So said that, and Mr. So-and-So said this. Would you try to do that, please? A. General Drake opened the meeting by stating, substantially, that: "We have called you gentlemen here to acquaint you with certain phases of our supply plan tied in with the defense plan of the Philippines. We invite and solicit your cooperation. My Executive Assistant, Major Kalakuka, will give you the details, and I am turning over the meeting to him." That was about the introductory statement.

Q38. What did Colonel Kalakuka say? A. Then Major Kalakuka told them that it is our supply plan. That in case of emergency, if the Philippines were attacked, we
216 would require at least 50 per cent, or about 50 per cent, of the fuel oil and petroleum products capable of being stored in the Philippines for military use. He said that he tried informally, by contact, to find out just how each company was keeping its stock up and what the variation was; but he told them: "If you are interested in meeting exceptional demands and conditions, strive as far as possible to keep the storage up to the very maximum, because we are basing our needs on about 50 per cent of what you can store. Our plan also calls for using distributing centers and gas station, and so forth, as they may be required." None was mentioned at the time—just in general terms.

He said he would like to set up in his office a chart showing the supply at Pandacan as it stood from time to time, and would the companies be willing to informally supply him with such information, so that he could at all times know just how much of each type of fuel and so forth there was available.

Q39. Did he also ask the companies to furnish a record as to the available storage space? A. He had that information and referred to it specifically in figures. He said: "What I am concerned about is, what have you?" And he pointed to one of the representatives and said, "What have

you actually in stock?" And kept interjecting at the
217 time—keeping the people aware there that we would like to keep those tanks as full as possible.

Q40. What did the representatives of the oil companies say? A. There was a general round-table conversation. I remember (unable to identify the source), "The replenishment of our supplies is not as reliable and as regular as it used to be. We, too, would like to keep our tanks full." But each one in turn, as they spoke there, said: "Why, we would be only too happy to cooperate with you and you name when and how, and we will 'phone or send you the information, just what our inventory is on a certain day."

Q41. Do you know if, as a matter of fact, thereafter the Army received information as to the amount of supplies on hand at Pandacan, and the amount of available storage space, and so on? A. I could only answer that in having seen Colonel Kalakuka's chart posted pretty well up to date, as I had occasion to see that part of the plan.

Q42. In other words, after the meeting you were able to observe a chart in which the information that he had requested was reflected; is that it? A. That is correct.

218 Q43. Do you recall a meeting between General Drake and certain of his staff with representatives of the oil companies held sometime around the 11th or 12th of December, 1941? A. I do not.

Q44. Did you attend any such meeting, personally? A. I did not.

Q45. On December 11th or 12th, 1941, who was your immediate superior officer? A. Colonel Frank Bersina.

Q46. What was his duty assignment? A. He was the Department Quartermaster.

Q47. Colonel, on either December 11th or December 12th, 1941, did you receive any orders from Colonel Bersina which related to the use of petroleum supplies of the commercial oil companies of the Philippines? A. I place the date as most likely December 12th, quite late in the day, because when I returned to San Beda College, where our offices had just been moved to on account of vacating our regular offices in the port area, most of my employees had gone for the day. I was told that Colonel Bersina had been trying to find me all afternoon. I stepped down there and there were several people in Colonel Bersina's office.

Q48. Do you remember who they were? A. Colonel
219 McConnell was there, Captain Carlton was there, I believe that one of the stenographers was there; I couldn't tell you which one of the several we had.

Q49. Incidentally— A. I came in there and he said: "We have been trying to find you all afternoon. A lot of things have happened." He said, "I want you to meet Mr. Coleman, we have just brought him in to put him to work as liaison officer and coordinator for our fuel problems." He said, "He has been here, connected with the petroleum people, for a number of years and knows everybody and knows their language, and he is going to be of great help to iron out and keep this thing going." He said, "We have taken over Pandacan, lock, stock and barrel."

The Commissioner: When was this?

The Witness: I think late in the day of December 12th. He said, "McConnell is putting an officer in charge at Pandacan who is going to transact his business there through Mr. Coleman." Then he turned to McConnell and said, "You sure have your problems in so far as trying to find enough men for military police and security."

It was the same thing we needed for some of the stations we were talking about. He was directing remarks in there and things all around.

220 I don't know whether that session terminated for a few minutes and he called me back, but it was later and subsequent to this that he said: "Along the lines that we have been talking about, about the use of private property, I want you to do there what is necessary in connection with acquisition."

It is a lengthy story for me to elaborate for just what he meant. I am sure what I just said doesn't convey much in the way of intelligence to you. If you want me to proceed, I will.

By Mr. Kissam:

Q50. Just let me get this correct. This was a meeting held by Colonel Bersina and attended by you, Colonel McConnell, Captain Carlson and one civilian employee and Mr. Coleman; is that right? A. There were others there, Mr. Kissam. I think Colonel Magnuson was probably there, too, and possibly one or more officers from McConnell's organization beside Captain Carlton.

Q51. Other than yourself; so far as you know, are there any survivors who were at that meeting? A. There may be several. So far as the military, I know and have been told that Colonel Bersina and Colonel McConnell and Captain—later Colonel—Carlton and Colonel Magnu-

221 son who, I think, was there, are war casualties. But I don't know as to Mr. Coleman, the stenographer, or whoever else could have been there. The room was full.

Q52. Colonel McConnell told you, as I understood your testimony, that the Army had taken over Pandacan lock, stock and barrel? A. Colonel Bersina said that.

Q53. Did he say anything about the service stations in Manila? A. He mentioned them more than once, in so far as getting the necessary guards and security people. He said to McConnell, "You will also need guards at these other places", and they discussed sources where military guards could be obtained.

Q54. Thereafter, to your knowledge, did the Army control and utilize the facilities of the oil companies in the Philippines? A. I couldn't speak for the entire Philippines. They certainly controlled Pandacan. They controlled some of the service stations.

Q55. When did you leave Manila? A. I left on the night of December 24th, 1941.

Q56. And went to Corregidor? A. I went to Ba-
222 taan.

Q57. At all times, while you were in Manila, did the Army, so far as you know, continue its control and use of the facilities and supplies of the oil companies in Manila? A. Well, as late as December 20th, when I was at Pandacan, there was an officer in charge and plenty of military personnel there—seven or eight.

Q58. What I am getting at is: So far as you know, at no time prior to the evacuation of Manila, which was around the end of December, 1941, did the control of the facilities of the oil companies and their products ever go back and revert to the oil companies; the control remained in the Army. Isn't that right? A. I would think so.

Mr. Kissam: That is all.

(Discussion off the record).

The Commissioner: We will take a short recess.

(A short recess was taken).

The Commissioner: Let us proceed.

Cross Examination

By Mr. Barnes:

XQ59. Colonel Kramer, going back, first, to this meeting in June that you said you attended with representa-
223 tives of the oil companies, do you recall anything being said, either by representatives of the Army or by

representatives of the oil companies, with respect to the manner of distribution of the gasoline in the event of an emergency? A. Yes. I remember Major Kalakuka telling them that everything that they had would be needed to effect distribution, because at that time he saw no prospect of the Army acquiring or obtaining—it had no equipment to speak of of that type, and did not hope to acquire any.

XQ60. So they would need to have the tank trucks and other things of that type for distribution to whatever points the materials were actually needed? A. Yes, and he said distinctly, "We expect to keep your organizations", and he even mentioned to the extent of working out arrangements for taking over the payroll, or whatever may be necessary. He was as much concerned with a going organization that you can do business and distribute, and so forth, that he wanted to have the use of, as he was with gallons of gasoline. That was the outline of his plan to the oil companies.

XQ61. In December of 1941, what was your position? A. Well, I was Chief of two Divisions, I was Chief of the Construction Division and Chief of the Real Estate
224 Division, which had mushroomed from a little branch in the Construction Division to a full-fledged division, just about dwarfing the construction—and especially after December 8th, when I was hardly concerned with construction and was very interested in real estate matters.

XQ62. You said, at this conference that you went to, or this meeting in Colonel Bersina's office, that he spoke to you about taking over the oil companies. Was that in your capacity then as head of the Real Estate Division? A. It was exactly in that capacity, and it was just a continuation of lengthy conferences on the subject of acquisition of lands and buildings and the like. This was merely a reminder. This falls in the category of "What I told you I wanted you to do in connection with private properties".

XQ63. What was that—what was the background of his remark to you in that connection? A. Well, when a full-fledged Real Estate Division there was established about the 1st of November, 1941, which was necessitated because of our preparedness program, different operating agencies of the Government had their own ideas of acquiring private properties, without stopping to think that acquisition of real property was vested in the Quartermaster Corps and in the Real Estate Division. One of the first ones
225 to appear was an Air Corps matter, where an Air Corps officer spoke for a property, spoke of the con-

sideration and the details, and so forth. When I entered into the picture to negotiate and actually make a contract on behalf of the Government, my hands were tied and I screamed. I contended that I was not there entering this negotiation in a fair way because of prior commitments.

We finally got the owner of this real estate affair to think the way he should have, and also impressed all other divisions that they could, at best, ask that certain properties be acquired for them; but they were to make no commitments because the Quartermaster Corps was to have a free hand to enter those negotiations.

Along those lines, these negotiations and contracts and leases were so numerous and of so many different types,—in so far as consideration is concerned, it was from nominal to full value. But Colonel Bersina told me repeatedly—and I agreed with him and carried out his instructions to the letter—that when we used anyone's real estate we would, and did in a good many cases there, negotiate some type of a lease or contract.

XQ64. Did you understand that he was instructing you to negotiate some kind of a lease or contract with
226 the oil companies, or did he do that? A. I could not take his remarks to mean anything else. I will try to relate them as best I understood them and heard them. "Of course, you have your job to do in so far as negotiating with these people for the use of their property."

XQ65. That was your understanding? A. That was almost substantially what he said.

XQ66. Did you enter into any negotiations with any of the oil companies prior to having to evacuate Manila? A. I would have to answer the question no, regardless of the fact that I know definitely that I had the names of the companies, at least, on lists of unfinished contracts that I carried in my haversack to Bataan. I can explain that only in one way and that is: When I left Colonel Bersina and I went upstairs to my own office, I jotted down names of people we would have eventually to negotiate with, and probably started folders. I don't think any negotiations were started because, on negotiations of that type, I usually started them, then permitted an assistant or someone in my office to see it through, in so far as the detail of the document or the contract.

XQ67. In other words, your usual policy in an operation of that type was to reach a general agreement as to
227 the basis of the contract, but then leave to somebody else the actual detailed negotiation of where the com-

mas were to be, and things of that type? A. That is it, exactly.

XQ68. It is your recollection that you did not make that first step in any of these cases? A. We did not, they were in the category of at least two hundred cases that we did not approach.

XQ69. Did Colonel Bersina or anybody else give you any indication as to the type of contract to be entered into, whether it was to be a lease for a certain period of time, or an indefinite time, or a contract of purchase? A. I believe I can answer that for you, because he answered to a specific question of mine. I must have asked him there, "How long are you going to use it?" He said at least once during this general conversation or conference, as you may call it, "Our Army's plan is still the same, as we understand it. We are going to hold and defend Manila just as long as possible and the withdrawal to Bataan will follow only when and if it is necessary; and I don't know why we shouldn't be able to hold out for a couple or three months." That was mentioned, I would say, at least twice during that conference.

228 XQ70. In other words, the contract which you felt that he was instructing you to make would have been a contract for the temporary use of the facilities at Pandacan, or a lease, let us say, for the period of the emergency, or something of that type? A. A lease for a limited period that would be, in the way we were transacting them, at least for the balance of the fiscal year with one year renewable; that is our nature of a temporary lease. We make it to the nearest June 30th and renewable for one year thereafter.

XQ71. You say that you were, during that period, negotiating other arrangements of that type in the Philippines? A. Yes.

XQ72. What type of consideration were you paying on those? A. It is very difficult to answer that.

Mr. Kissam: That is objected to as having no relevancy. The Colonel has testified as to what he had planned to do and what he understood his instructions to be. We are concerned not with what the plans were but what in fact was done. I do not see any relevancy in establishing what was done by contract in other instances.

229 Mr. Barnes: Your Honor, we also have a question involved in this case which is going to have to be reached at some point as to the measure of just compensa-

tion. It seems to me that a man of this type, who was actually negotiating arrangements in the Philippines under the conditions actually existing there at the time, can give us perhaps the clearest light as to what the general ideas of value were.

The Commissioner: You are going beyond the scope of direct examination, are you not?

Mr. Barnes: Yes, sir. I will make him my witness on this point, if it is desired.

The Commissioner: Objection overruled.

Mr. Kissam: I think my objection as first made is proper because, one, the Government has admitted no lease or sale. We are contending of taking and requisition without compensation, and if there was a taking and requisition without compensation, we have to take into account the time and place.

If Mr. Barnes wants to discuss comparable properties, and the properties are really comparable, that is something else. But to say, "What did you do with Jim Jones, who had a store", or, "What did you do with John Smith,
230 who had a big storage place", I can't see any foundation for the question.

The Commissioner: I do not know where it will stack up on the matter of just compensation. I thought it was admissible in the course of conduct. Much of this testimony has to do with establishing a course of conduct between the Army and the oil companies.

Mr. Kissam: The question is now, what was the consideration or what type of consideration was used.

The Commissioner: The objection is overruled. The other matter of the comparability goes to the weight. If there is no comparability, it will have no weight at all.

Mr. Barnes: Let me withdraw the question and start again.

Mr. Kissam: I have an exception.

By Mr. Barnes:

XQ73. Were you given any instructions by Colonel Bersina or any of your other superiors with respect to the manner of determining the compensation to be paid the oil companies? A. No, I never received instructions from Colonel Bersina; that was supposed to be my business judgment,
after consulting with the using agencies as to just
231 what they wanted the property for, to what extent they would alter and use it, and so forth. Each one was in its own class.

XQ74. In this case, what did you consider to be the using agency? A. Colonel McConnell—I would like to withdraw that. The Philippine Quartermaster Depot, of which Colonel McConnell was Commanding Officer.

XQ75. Did you have any discussions with him that you can recall now as to the use to which he intended to put this? A. I didn't get around to it. But I would have before I approached the companies.

XQ76. Did you enter into any contracts or agreements during this period for the temporary use of property in the Philippines, for a nominal consideration?

Mr. Kissam: That is objected to as irrelevant. What property—what kind of property?

Mr. Barnes: I have got to do one thing at a time.

Mr. Kissam: You can first identify the property.

Mr. Barnes: Unfortunately, these are witnesses you have called and interviewed; I have not.

The Commissioner: Objection overruled.

Mr. Kissam: Exception.

(Question read).

232 A. There were some. I will specifically mention a lease of a warehouse from Tabacelera, which they were not using, and when I approached them in negotiations they offered it on an annual basis there of one dollar a year.

XQ77. Do you recall any others? A. If I am to accept the word "nominal" as being less than what I thought the property was worth, then there were a good many others. In our negotiations and my dealings, and the contracts that we more or less completed, it was probably the other way around, we felt that what the people were asking there was reasonable and we only had exceptions, where we actually had to bear down because they were asking excessive amounts over and above what we had as a sort of a general rule of what we wanted to pay.

(Discussion off the record).

The Commissioner: We will recess for lunch until two o'clock.

(Luncheon recess taken).

233 AFTERNOON SESSION

2:00 p.m.

JOSEPH E. KRAMER, resumed the stand and testified further, as follows:

Cross Examination (Continued)

By Mr. Barnes:

XQ78. Colonel Kramer, you would have had nothing to do, in your capacity, with payment for the gasoline or other petroleum products there, would you? A. Not at all.

XQ79. Were you told by Colonel Bersina at the time of this conference what arrangements, if any, had been made with respect to payment for gasoline taken from Pandacan for use? A. No mention made of it in any conferences that I participated in.

XQ80. Would the question of the basis of payment for the gasoline have affected the value you would, or the amount you would have been willing to pay for the use of the facilities? A. I could not answer that question, Mr. Barnes. We entered those negotiations there with open minds. They were, first, just discussions with the owners and just what they expected. We approached it from
234 an open-minded angle, just having our own self-imposed limit in mind, which everyone knows is 15 per cent of the appraised valuation of the property.

XQ81. On a yearly rental? A. Yearly basis applying in peace times in the United States. So we really were not bound by it in the Philippines, but, nevertheless, that is what I had to give my assistants as a rule.

XQ82. What did you understand was to be covered by this contract that Colonel Bersina had told you to prepare? A. I would say land, buildings, tanks, fixed and permanent installations. In fact, everything except portable equipment, stocks and supplies. That is what we class and include in real estate contracts.

XQ83. In other words, it wouldn't have included, let us say, hand tools? A. No.

XQ84. Or anything of that type? A. No.

XQ85. It would not have included any of the rolling stock, the trucks and so forth? A. It would not.

XQ86. But it would have included fixed equipment, like fences and internal telephone systems, and things of
235 that type? A. Even such things as permanently installed pumps.

XQ87. Were you ever at Pandacan subsequent to that time—did you ever see any of the terminal properties after that date? A. What date?

XQ88. The date of your conference with Colonel Bersina. A. Yes, about one week later. I would place the date at approximately December 20th, when I was out there last.

XQ89. What was the occasion of your being out there, do you recall? A. My answer would be just a pure guess as to what took me out there.

XQ90. Do you know how long you were there? A. Yes; I was there a little while, about two hours or so.

XQ91. What were you doing, do you recall? A. I am merely offering this in answer as a guess. It was supposedly reported to have suffered some bomb damage, and it was about the time that the port area received its second and almost final going over by Japanese bombs. I went over there to see what, if any, direct or indirect damage it had suffered. It is just a vague recollection. I was on the go from morning to night.

XQ92. Do you recall there was a fire out there at
236 one point? A. Yes, I recall more than one fire. I think there were two fires, both placed under control. I remember a fire about the 14th or 15th, where we had a lot of Army equipment out there, and it was placed under control in very short order. I think I was out there after the fire and saw a neat job of fire-fighting our men did. It was checked more by military personnel than by the city Fire Department.

XQ93. When was it you left Manila? A. The night of the 24th.

XQ94. You were not at Pandacan after that date? A. No, not after that date. I was on Bataan from that time on.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Kissam:

RDQ95. Colonel, Mr. Barnes asked you after you had been directed, by your superior officer, to arrange for the lease or sale of any property, what your practice was thereafter; just what you did. I recollect that you said that you took it up with the using organization to determine what their needs were and, after you knew that, then you took it up with the owner of the property or facilities, or
237 whatever it was. Is that correct? A. That is correct.

RDQ96. Mr. Barnes asked you what organization you considered was going to utilize the Pandacan facilities and you said the Quartermaster Department; you named a Quartermaster organization of which you said Colonel McConnell was the Commanding Officer; is that right? A. Right.

RDQ97. Then he asked you if you had discussed the use of Pandacan with Colonel McConnell and you said you had not? A. That is right.

RDQ98. As a result of your conversation with Colonel Bersina during the conference that Colonel Bersina held on the evening of December 12th, 1941, you said you already knew the anticipated use of the facilities of Pandacan, did you not? A. I did.

RDQ99. Incidentally, you also knew that use, or the contemplated use, as a result of the information which you obtained through your study of the so-called Orange Plan? A. True.

RDQ100. At no time did you ever approach Caltex to discuss terms under which their facilities were to be
238 used, did you? A. Never did.

RDQ101. Regardless of that, the United States Armed Forces—at least, from December 12th, 1941, until the Japanese came in—had the continued and exclusive use of the facilities of Pandacan, did they not? A. As far as I know.

RDQ102. When you talk about taking Pandacan, you described a moment ago that you were talking about, for your purposes, everything except portable items; is that correct? A. Yes.

RDQ103. You were not segregating tanks and houses, canning factories, or anything of that sort; it was a taking as a whole, was it not? A. We attempted to as fully and completely describe each unit of an owner's property for identification, so far as size, description, type of construction, so that the document of itself there would convey a picture on what we are taking over and the justification for the consideration.

RDQ104. In other words, if you had negotiated the lease, that lease would have enumerated all of the physical properties which constituted Pandacan other than movable items; is that about right? A. That we were going
239 to use—and at this point I want to make my answer clear on consulting with the using agencies as to the extent of the use of the property by quoting an example of

something that has already been mentioned, and that was the Santa Ana Race Track.

Colonel Quinn 'phoned me that he wanted the Santa Ana Race Track. I contacted the owners and, in the meantime, I went over to see him and he told me he was moving in the shops and so forth. The owners came over to my office and I learned for the first time that there were extensive corrals, and so forth, where they stable horses. I called Quinn and he said, "I am not interested in the corrals."

The record will show that the lease I made with the Santa Ana Race Track people was for that portion of the race track that we were interested in; but, by the same token, I would say that the stables were not exactly abutting or adjoining. They were a little ways off, and we had no use for them. Consequently, they were not rented—even though the owners considered them as part of their so-called race track.

RDQ105. Getting back to the matter that we are trying here, as I understand your testimony, you were concerned with the acquisition of Pandacan as a going operating concern? A. Yes.

RDQ106. In other words, the Army was coming in
240 and having the use of the facilities, and all you were going to do was to use the employees of the oil companies so far as you could use them, under military supervision? A. That was the plan.

RDQ107. Colonel, what happened to you after Corregidor—where did you go from there? A. After Corregidor?

RDQ108. You went to Bataan? A. Yes.

RDQ109. Where did you go after you left Bataan, and when? A. About the 1st of March, 1942, I was relieved from duty on Bataan and ordered to duty on Corregidor.

RDQ110. How long were you on Corregidor? A. I was on Corregidor up to May 6th, 1942,—that was the date of surrender—and for some few weeks after that, when the Japanese removed us from there to another detention area.

RDQ111. Thereafter, until the war was over, you were a prisoner of war? A. I was a prisoner of war until the 9th of September, 1945.

Mr. Kissam: That is all.

241 Recross Examination

By Mr. Barnes:

RXQ112. Just to be sure that I understand this business of you talking with the using agencies, you consulted with

them to determine the extent to which they might wish to alter any structures that were present, or anything of that type—is that the idea—as well as to determine the exact extent of what they wanted to use? A. This determination would come about when you were acquiring extensive spread-out properties, where we may not want all of it. It would not apply to a single building or tract of land.

RXQ113. Suppose that a property was being taken with the intention of materially altering the inside arrangement to fit it for some other purpose, would that have affected your contract? A. It would not have affected it, but we were required—and the reason why the negotiation and the actual conclusion of one of those contracts was so lengthy, that on most properties, if not all, we made surveys showing the condition of the property in general terms at the time of occupancy, because we guaranteed the return of the property to the owner in at least as good a condition
242 as when we had received it, less wear and tear.

Mr. Barnes: That is all.

(Witness excused).

Otto Harwood, residing at 2502 Sunset Boulevard, Houston, Texas, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Kissam:

Q1. Are you on active or inactive status? A. Inactive.

Q2. When were you retired? A. I was retired on the 31st of October, 1946.

Q3. For purposes of this record, would you state your serial number, please? A. O-7934.

* * * * *

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By Mr. Kissam:

Q13. You were on active duty, of course, in June, 1941? A. Yes, sir.

Q14. Prior to your retirement, how many years had you served in the Army of the United States? A. Twenty-eight years and some months.

Q15. In June, 1941, what was your duty assignment and where were you stationed? A. I was the officer in charge of the Supply Division of the Department Quartermaster, Philippines, and in such capacity handled the routine administrative supply for the Quartermaster Department of the Philippines, and also had the duty of making study surveys of the local conditions in the Philippines
245 affecting the supply situation for the time of emergency and, after such studies and surveys, to write up plans for operations, Quartermaster Department, in case of emergency, in time of war.

Q16. Were you also the War Plans Officer? A. I was the War Plans Officer from June, 1940, until about August, 1941.

Q17. In your capacity as War Plans Officer, did you make certain studies to determine what supplies were available locally and what stock and supplies the Army had on hand, and so forth? A. I did.

Q18. Were you also familiar with the so-called Orange Plan? A. I was.

Q19. Will you tell me, addressing yourself only to the question of petroleum products and facilities used in relation with the petroleum products, what you found out when you made this study in your capacity as War Plans Officer, between 1940 and about August, 1941? A. The studies which I made showed that the amount of gasoline on hand in Pandacan was sufficient to meet our computed requirements. That was the essential fact we were
246 trying to arrive at. We had on hand at all times only that amount of gasoline which could be considered as necessary to carry on daily operations. Supply of gasoline was regularly obtained locally and the tank storage which we had on hand at the stations on Luzon was just that amount which was necessary to meet the daily needs between deliveries. It was in no sense an attempt to keep on hand gasoline for such an emergency as war-time operations.

I will say that at Corregidor they did have a very limited amount of gasoline storage space for gasoline contemplated as a war reserve, something like 300,000 gallons, but only that.

The fact was determined that Pandacan had the facilities to contain all the gasoline computed as necessary in the case of emergency. I say "computed", because we had to have some basis on which to make computations, and on that basis we had in sight, at Pandacan, the necessary

facilities. In fact, the facilities at Pandacan were shown to be able to store approximately 15,000,000 gallons of gasoline. I personally went to Pandacan and made the necessary survey to check that fact.

The 15,000,000 gallons of storage were divided up amongst three major companies, the Standard
247 Vacuum, the Asiatic Petroleum and the Caltex, in the ratio of about six, six and three. The facilities, like most storage facilities, could not be kept full at all times. They kept on hand larger quantities at one time than what they had at another. The amount on hand for most periods would average from between eight to twelve million gallons.

It was necessary for our purposes to know at all times about what was on hand, in order that we would be certain that we could meet our requirements in the case of emergency. So I had made up mimeographed forms which called for the necessary information and obtained reports regularly each month, and more often as was required, to know that the quantities on hand at Pandacan were sufficient to meet these computed requirements.

Q20. You say you personally made an inspection, or a survey, of the facilities at Pandacan? A. I should say the gasoline storage facilities. I did not check trucks or other equipment which was moving equipment.

Q. 21. Did you make arrangements with the oil companies that they would periodically and frequently send information to you which reflected not only the stock on hand at the time of the report but also the available storage space? A. I did.

248 Q22. When would you say, as a matter of time, that you first commenced to receive data from the oil companies reflecting the actual supplies of the companies and their storage space? A. I would not be able to say exactly when, but, as I know very well, General Grunert held his first big conference on the matter of the defense of the Philippines in June, 1940, after his arrival there. It was not very long thereafter when it became necessary for all officers, myself included, to do the jobs which were assigned, one of which was, in my case, to obtain the necessary information on quantities available locally; and I presume, accordingly, that was not later than July that the first reports on the matter began to come in. That was as early as July, 1940. Whether the regular report which was called for thereafter and regu-

larly followed started exactly upon that date, I am not able to say.

Q23. Can you say this with certainty: Can you say that several months prior to December, 1941, the oil companies were consistently complying with your request that you receive current information as to the state of their supplies and storage space? A. Yes, sir.

Q24. Could you state how frequentiy you would get
249 those reports—would they be daily, weekly or monthly? A. Monthly, regularly, and at such other times as they were called for.

Q25. Were they called for at times other than monthly? A. They were, occasionally.

Q26. By you? A. By me.

Q27. You were personally interested in knowing at all times what supplies and storage space would be available for use by the Army, were you not? A. That was one of my duties.

Q28. Are you able to state what petroleum stocks the Army had in the Philippines prior to December, 1941—or let us say just prior to the war, prior to December 8th, 1941? A. I can state definitely that their storage facilities were approximately 350,000 gallons, not more than that, even when filled. As I said, though, the facilities at the posts were intended to take care of daily operations and, naturally, tanks were filled only at the very moment when a tank delivery was made.

Q29. Your estimate of 300,000 gallons, does that include this 500 gallons that came in in tins as a result of the req-
uisition by General Drake when he asked for the
250 tins, and the tins came in filled with gas? A. It does not. That was a special requisition that was made later, and the correct amount of that delivery, made in one shipload, was 897,000 gallons.

Q30. So the total, then, would be the 300,000 gallons, to which you made reference, plus the eight hundred some-odd thousand gallons that came over on this special shipment? A. Yes.

Q31. Colonel Harwood, am I correct in stating that at all times, in the contemplated use of the so-called Orange Plan, that it was the Army's intention to count on and rely upon—if the plan became effective—for purposes of fuel of all kinds, the supplies of the commercial oil companies and to rely upon the facilities of the commercial oil companies in the Philippines? A. It was.

Q32. Obviously because there was no other source? A. Yes, obviously.

Q33. Did you attend any of the meetings called by General Drake with the representatives of the oil companies? A. Yes, sir, and I attended a good many meetings that I called on my own.

Q34. As a matter of time, when was the first meeting of any importance between Army representatives and the oil companies that related to the possible use of the supplies and facilities of the oil companies in the event of war? A. Well, it was sometime in May or June, 1941, as far as I remember.

251

Q35. Was that meeting called by General Drake? A. Yes.

Q36. You were personally present? A. I was present at the meeting I have in mind, yes.

Q37. What is your best recollection as to the names of the other officers who were present, in addition to General Drake and yourself? A. The Motor Transport officer, Colonel Quinn; there was Major Kalakaka; I think there was the Depot Quartermaster at that time, Colonel McConnell—I cannot remember whether it was Colonel McConnell, or—I don't remember Colonel McConnell being there.

Q38. Do you remember the names of any of the representatives of the oil companies? A. The only representative that I can well remember now is one whom they called "Pinky", and I can't remember whether he was at this meeting or not. There were so many meetings, I have difficulty distinguishing among them.

252

Q39. In any event, will you state your best recollection of what was said by the Army personnel and, if possible, name the Army officer speaking; and what was said by the representatives of the oil companies at this meeting, which you fix as taking place in June, 1941? A. The meeting I have in mind was called to definitely fix upon the minds of the oil company officials the matter of what we expected from them. The meeting, as I remember, obtained perfect agreement. There was no objection to anything that was proposed; and outside of the understanding that we would take over, in time of war, the facilities at Pandacan—I mean the tanks and the gasoline—we also tried to impress upon them that we would require about—let us see; whether it was require or we should consider 50 per cent of what they had as needs for the Army.

Q40. In other words, this was a conference in which the

oil people were advised of what demands the Army would make upon them in the event of war; is that correct? A. That is correct; at least, the repetition of that particular matter was put forth in that meeting.

Q41. When you say maintain reserves of 50 per cent, do you mean that the oil companies then agreed that at no time would they dispose of more than 50 per cent of
253 their capacity, or how do you mean that? A. As we understood the situation at the time, they should have kept on hand about 50 per cent of their normal quantity on hand, in order to meet our requirements.

Q42. In other words, you testified earlier that you thought that the storage capacity, maximum storage capacity of Pandacan was about 15,000,000 gallons; is that right? A. That is right.

Q43. So I gather from what you are now saying that the oil companies, at this preliminary meeting in the middle of 1941, agreed that at all times they would have available at least half of that capacity? A. That was the way the matter was put forth.

Q44. That was the middle of 1941. Now getting on to the period after war was declared, do you recollect attending another meeting to which the date has been referred to as either December 11th or December 12th, 1941, but most probably December 12th, which was also called by General Drake and which was attended by certain officers on his staff and by representatives of the oil companies? A. All I know about that meeting is hearsay. I was already, at that time, either on my way to Bataan or busily engaged in preparing to take care of my duties on Bataan.

254 Q45. Were you on Bataan on December 12th, 1941? A. No, I left on the 13th.

Q46. Do you remember a meeting which was opened by General Drake, who then introduced his Executive Officer, Colonel Bersina? A. I have been confused about that meeting. I know of it, but I cannot just recollect what took place. It is more hearsay than memory.

Q47. Let us forget the date of the meeting. Do you remember ever being present at a meeting called by General Drake after war started, when General Drake told the officials of the oil companies that forthwith the Army was taking over their fuel supplies and their facilities? A. I cannot definitely remember a particular case, but I could say that I can remember definitely that we had an idea on that subject continuously, which was as common an understanding as it could well be.

Mr. Barnes: I move to strike that out.
The Commissioner: Motion allowed.

Q48. Colonel, I think there has been some testimony in which your name was mentioned as attending a meeting subsequent to the war. That is my recollection. There has been testimony that there was a meeting called by
255 General Drake in which the companies were advised by General Drake that forthwith the Army was taking over the fuel supplies and the facilities of the oil companies. With that description of the meeting, does that refresh your recollection so that you can tell me whether or not you were present at such a meeting and, if you were, if that is a correct statement of the substance of what General Drake stated to the meeting? A. I was present at a meeting where oil executives were so informed. In fact, I was present at more than one meeting where the very definite statement was made to an oil executive, and probably more than one oil executive, to the effect that in the case of war the facilities would be taken over.

Q49. Can you help me at all in the way I put the question to you, namely, do you have any recollection of a specific meeting which took place subsequent to December 8th, where General Drake addressed the meeting and stated in substance, to representatives of the oil companies, that the Army was forthwith taking over the fuel supplies and the facilities of the oil companies in Manila? A. I know they were, in meeting officially assembled, definitely told that particular fact. Whether it was General Drake that told them at the time, or Major Kalakuka, I just can-
256 not remember definitely.

Q50. I am not concerned if you have confusion as to which officer made the statement; I am concerned with whether you can state unequivocally that you know a statement like that was made. A. I could.

Q51. You can state the statement was made by either General Drake or Colonel Kalakuka? A. Yes.

Q52. Can you also state that that statement was made subsequent to the commencement of the war—that is, subsequent to December 8th, 1941? A. Yes.

Q53. You say you left the City of Manila on the 13th of December, 1941, and went to Bataan? A. I did.

Q54. Did you thereafter at any time return to Manila? A. I returned to Manila on the afternoon of the 31st day of December, 1941.

Q55. So you, of course, are not able to give any testi-

mony as to what happened in Manila between the 13th of December and the 31st of December, 1941, are you? A. No, sir, I am not.

257 Q56. When did the military personnel stationed at Manila evacuate the city? A. I believe that they had, for the most part, evacuated on the 28th of December, 1941, some two days previously.

Q57. When you were in the city on the 31st of December, were there a great many fires as a result of intentional destruction? A. There was one big fire that I observed, that was the only big fire that I did observe.

Q58. Which one was that? A. That was the fire at Pandacan.

Q59. Under the so-called Orange Plan, it was anticipated, was it not, that Manila could be defended for at least 180 days? A. I think the correct statement is that we could hold out the defenses on Bataan and Corregidor for 180 days, that being the maximum.

Q60. How long did the plan contemplate Manila could be held? A. The plan did not go into the matter of how long Manila could be held. The War Department Directive on the matter imposed an obligation which, carried out by the military, did not necessarily contemplate holding Manila.

258 Q61. Under your plan it was anticipated, was it not, that should Manila be evacuated, prior to the time of evacuation all necessary supplies in Manila would be transferred to Bataan and Corregidor? A. All necessary supplies would be, so far as facilities would be met.

Cross Examination

By Mr. Barnes:

XQ62. Colonel Harwood, do you recall what the Orange Plan contemplated as the requirements of gasoline for this period of defense? A. I remember only approximately. I usually kept in mind a top figure, which was about 5,000,000 gallons.

XQ63. Then that would have been for the entire 180-day defense period and not just for any final defense there might have been on Bataan or Corregidor? A. That included our total needs, as computed in the plan.

XQ64. For 180 days? A. That is, for the Army. It did not include Air Corps.

XQ65. You said that was in the neighborhood of 5,000,000 gallons? A. That is right. I should also say that was in

accordance with the plans which I worked on, that
259 was plans made during 1940 and 1941.

XQ66. Down to August of 1941? A. Yes, sir. And I also remember at the time that General MacArthur was placed in command of the Far East, a considerable expansion in the amount of personnel for the operation of the Army was immediately contemplated, that such increases as a hundred percent would be made. That sort of increase, if it had been contemplated at the time those plans were written, would have contemplated, also, the use of a double amount of gasoline.

XQ67. You referred to the storage facilities at Pandacan. You referred specifically to Standard Vacuum, Asiatic Petroleum and to Caltex. There was a fourth oil company that had facilities there, was there not? A. There were, I believe, two or three small concerns; but since in my duties I was concerned with the one outstanding problem of assuring that there was enough gasoline there at all times to meet the computed requirements, I paid no attention to the companies other than the three major companies.

XQ68. What about Tide Water Oil Company? A. It was not as large as the others I mentioned.

XQ69. Didn't it have storage facilities in the neighborhood of 5,000,000 gallons? A. I don't think so. I had
260 no report to that effect. I had reports from Tide Water. I did think that reports would be a little different from actual facts, but, generally speaking, I think they gave me a fairly honest report.

XQ70. You had, yourself, examined the facilities that were at Pandacan? A. The total facilities.

XQ71. Had you looked at the facilities of Tide Water at the time? A. I can't remember the facilities of Tide Water.

XQ72. You said you had been getting these reports from the oil companies; it would probably have been sometime in the summer or early fall of 1940, would it not? A. The first reports were probably made in response to letters of inquiry, before we had resorted to a regular type of mimeographed report. The same thing applied to other facilities outside of Manila, data which we sought from the companies pertaining to trucks, not only trucks available in Manila, but trucks available at San Fernando, Laguna and other places where such things we knew to exist. But in the first stages, we were feeling our way along until a definite procedure was finally decided upon.

XQ73. From sometime in August or July or Sep-
261 tember of 1940, you got some kind of reports? A. I did.

XQ74. Whether you got them regularly on mimeographed forms or what, you were getting some kind of regular reports from the oil companies? A. Yes.

XQ75. You were also getting reports from producers, and producers of other commodities that would be used in the time of war, about rice, for example? A. Rice was an item on which we had reports, but the situation on rice —as to available quantities in the local regions—was very similar, for our purposes, to the situation on gasoline. We could [illegible] in one location the total quantity to meet our computed requirements.

XQ76. That was through the Philippine National Rice Control? A. It was all located at Cabanatuan, and the reports were from the National Rice Association.

XQ77. You say that these war plans provided for your reliance on the commercial oil companies for your supply of oil and petroleum products in war-time. You relied on the commercial oil companies for your supply of petroleum products in peace-time, didn't you? A. We did.

261a XQ78. The situation would have remained unchanged except for larger requirement; isn't that correct, so far as your reliance is concerned? A. No, sir, it was quite different from that. We didn't contemplate procurement of gasoline in the same manner in which we had been procuring gasoline, because we could not feel that that was a certainty of supply, such as would be demanded by a war-time situation. As planners, and all concerned in planning, we knew we had to take it over.

XQ79. Take over control of the facilities to be sure that it did not get diverted or otherwise misused, you mean? A. To safeguard it, to use it properly for our own purposes, to know that we had it.

XQ80. When were you released from the Japanese prison camp, Colonel Harwood? A. In the latter part of August, 1945.

XQ81. You were then returned to this country and hospitalized, were you not? A. Yes, sir.

XQ82. Where? A. I was hospitalized finally at the Vaughan General Hospital, Chicago, Illinois.

262 XQ83. Do you remember being interviewed there, in December of 1945, in connection with your recollection of the situation with respect to these oil claims? A. I don't recollect.

XQ84. Let me show you this document, which is a photostatic copy of a certified copy of an affidavit allegedly executed by you on December 15th, 1945. (Mr. Barnes hands photostat to witness). A. I didn't quite understand what you mean by an interview? I do remember having made a report. I remember this.

XQ85. That is a copy of an affidavit you made on December 15th, 1945; is that right? A. That is right.

XQ86. Were the statements made in that true and correct, so far as you recalled them at the time? A. Yes, sir.

XQ87. Colonel Harwood, in this affidavit you make the following statement, in paragraph No. 6: "Relative to the alleged requisition by the Army in December, 1941, of all petroleum stocks, storage and handling facilities at Pandacan, just outside of Manila, your deponent states as follows: I have no knowledge of the original arrangement with the oil companies, nor do I know of any letter or other
263 writing evidencing the arrangement, nor do I know whether a copy thereof is available. My activities in the Philippines were as stated above, and I received no instructions relative to the requisitioning of petroleum stocks. Procuring of such petroleum stocks and equipment was left to the Depot Purchasing and Contracting Officer, which was not part of my duty."

In view of that statement that you made there, how can you explain the testimony which you eventually gave Mr. Kissam as to having been present at a meeting with representatives of the oil companies at sometime subsequent to the outbreak of the war, at which time a statement was made to them that the companies were being taken over?

Mr. Kissam: First of all, I want to object upon the ground that there is no inconsistency in this paper, which is not in evidence.

Mr. Barnes: I offer the document in evidence as Defendant's Exhibit 6. I showed it to you during the course of your examination of Colonel Harwood.

Mr. Kissam: This is not a signed copy; it is not a picture of a signed copy.

Mr. Barnes: The witness has identified it, however.

Mr. Kissam: I wonder why we could not have a photograph of the original?

264 Mr. Barnes: Because the War Department did not supply me with a photograph of the original.

The Commissioner: Do you object because it is not an original?

Mr. Kissam: May I ask the witness a few questions about it first?

The Commissioner: Surely.

By Mr. Kissam:

Q88. Do you notice this does not contain your signature but only has your name typewritten above the place of signature? (Mr. Kissam hands paper to witness).

Mr. Barnes: Mr. Kissam, I cannot think how you could have been misled by the questioning, because you had seen the document before I mentioned it to Colonel Harwood at all.

Mr. Kissam: I did not examine the document, as far as the signature.

Mr. Barnes: I think the record will show that the questions are perfectly clear.

A. I note that my signature does not appear here.

By Mr. Kissam:

Q89. Is this affidavit a result of your dictation? A. What I remember is the making of a report which was
265 called for by my former chief, who was then compiling a report on the supply operations of the Quartermaster Corps in the Philippines.

Q90. Do you have any recollection of making an affidavit while you were in the hospital in Chicago, Illinois, during December of 1945? A. I cannot remember making an affidavit on that subject; in fact, it causes me to wonder whether an affidavit was made. I have no objections to those statements, however, and I think I can explain it all.

Q91. You were asked whether or not there was an interview. This affidavit does not refer to an interview, does it? I think you had better read it.

The Commissioner: We will have a recess while the witness reads the affidavit.

(A recess was taken).

The Commissioner: Let us proceed.

Mr. Kissam: Your Honor, during the recess Colonel Harwood has read through that alleged affidavit and tells me, having read it, he recollects reading it before and does not doubt that he signed it, although he has no recollection of signing it or swearing to it. But he says the facts stated therein are true.

266 By virtue of the representation of the Colonel, I withdraw my objection to the offer.

The Commissioner: The exhibit is received.

(Photostatic copy of affidavit of Otto Harwood, dated 15th day of December, 1945, received in evidence and marked Defendant's Exhibit 6, as of this date).

The Commissioner: Will you read Mr. Barnes' last question?

(XQ87 read).

Mr. Kissam: Going back to the question put by Mr. Barnes, I am not basing the objection on his reference to an exhibit not in evidence, because I have consented that it be marked. I am objecting because his question contains a conclusion that there is an inconsistency between the testimony given by the Colonel and the extract which he has read from Exhibit 6. I submit that is assuming a state of fact which is not in evidence and it is an improper question.

The Commissioner: Suppose you reform the question, Mr. Barnes?

Mr. Barnes: I will withdraw the question.

By Mr. Barnes:

XQ92. Colonel Harwood, when, subsequent to the
267 outbreak of the war on December 8th, 1941, were you present at a conference with representatives of any oil company in the Philippines? A. I was present at a good many small conferences that I called myself, all of which had to do with many of the same matters that are now in question.

XQ93. You called those after the outbreak of war? A. Before the war, at a time when we were studying the situation, surveying the situation with a view to understanding whether we could take care of supplies.

XQ94. I am trying to tie this down to a conference after the outbreak of the war. Were you present at any such conference after the outbreak of the war? A. I haven't been able to remember if I was. I can't remember the time when a conference about the time of the outbreak of the war, an alleged conference, took place. I can't remember that.

XQ95. You went to Bataan on December 13th; is that correct? A. I did.

XQ96. Had you received your orders to go to Bataan prior to that date? A. Yes, I had received them con-
268 siderably before that date, some four or five days.

XQ97. During the intervening four or five days, were you making your preparations to go to Bataan? A. I was.

XQ98. Were you engaged in active duties in Manila during that period? A. I was.

XQ99. What were you doing? A. I was making computations on requirements necessary to do the jobs on Bataan, requirements for trucks, requirements for personnel, requirements for food to feed the individuals; computations on the amounts that were in stock in the various warehouses on Bataan, stocks that had to be moved out to many different locations for security.

XQ100. In other words, what you were doing during those days was the groundwork necessary for the job you would have to do when you got to Bataan? A. Yes.

XQ101. What were you sent to Bataan to do? A. The two main jobs which I was sent there to do, in the first place, were to move out of Limay some 500,000 gallons of gasoline in drums, piled in one place at Limay, and store it at proper locations where it would be secure and
269 convenient to supply. Also, to move out of Limay some three or four million pounds of canned goods, food, in storage in the warehouses there, and to store it in suitable secure places providing protection against the elements and security from aircraft, located for the supply of troops. But those jobs having been completed, it then dovetailed into others in connection with the evacuation from Manila.

XQ102. Your initial duties were to disperse these stocks at Limay for the dual purpose of rendering them less susceptible to total destruction by a single bomb, or something of that type, or one air attack, and to have them at more convenient locations for use, if they were eventually called on; would that be a correct statement? A. Yes.

XQ103. Eventually, as the evacuation of Manila and the withdrawal to Bataan was ordered, I assume you had dumped on you a lot of additional stocks for storage? A. Yes.

XQ104. What were you engaged in doing, as nearly as you can recall, on December 12th, the day before you left? A. I had mainly in mind a job to which I had been assigned, but there were many other jobs under such circum-

stances. I was, in addition to some other duties, a
270 custodian of certain secret documents, responsible for submitting to the War Department status reports, and I had also been given the job of preparing the status report on the situation of supply of the Philippine Army, an army that belonged on the other side of the Walled City, as far as I could figure out at that time, and having completed those jobs only just very recently, cutting loose from those various activities and taking on some new ones kept one pretty busy. It is rather difficult to remember dates and time of what did take place.

XQ105. You do not recall now being present at any meeting of oil company representatives on December 11th or 12th? A. I can't remember my exact dates.

XQ106. Any time after the outbreak of war? A. Not after the outbreak of war.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Kissam:

RDQ107. Colonel, referring to Defendant's Exhibit 6, did you have anything to do with the language contained in the exhibit? A. I did.

RDQ108. Did you dictate it? A. I did.

271 RDQ109. When you dictate things, do you normally use the expression, "Your deponent says", and so on? Is that your language? A. No, I don't think that is my language. The numbered paragraphs are my language.

RDQ110. For example, referring to paragraph 6, about which Mr. Barnes questioned you, it says: "Relative to the alleged requisition by the Army in December, 1941, of all petroleum stocks, storage and handling facilities at Pandacan, just outside of Manila, your deponent states as follows:" Is that your language? A. No, I don't believe it is.

Mr. Barnes: What about the lettered paragraphs below that, are those your language?

RDQ111. Read paragraph 6(a) and 6(b).

Mr. Kissam: For the record, I will read paragraph 6(a):

"I have no knowledge of the original arrangement with the oil companies, nor do I know of any letter or other

writing evidencing the arrangement, nor do I know whether a copy thereof is available."

RDQ112. Is that your language? A. Yes.

272 RDQ113. That is a fact, isn't it? A. It is.

RDQ114. When you attended these meetings and the oil companies were advised that the Army was going to take over their facilities and supplies, you have never testified that there was any expression of arrangement for payment, or anything of that sort, have you? A. I have not. I had no knowledge of such arrangements.

RDQ115. So the statement which I have just read into the record from Exhibit 6, from paragraph 6(a) thereof, is a statement which you would make today, under oath, again; wouldn't you? A. Yes, that is correct.

RDQ116. Let us take paragraph 6(b) of Exhibit 6:

"My activities in the Philippines were as stated above, and I received no instructions relative to requisition of petroleum stocks. Procuring of such petroleum stocks and equipment was left to the Depot Purchasing and Contracting Officer, which was not part of my duty."

That is a correct and accurate statement of fact, is it not, Colonel? A. Yes.

RDQ117. Let me attract your attention to para-

273 graphs 3(a) and (b) of Exhibit 6. Would you mind looking at that and telling me if that is your language? (Mr. Kissam hands exhibit to witness). A. That is my language.

RDQ118. Are the facts correct—3(a) and (b)? A. The facts, as stated, are correct.

RDQ119. (b) is composed of several subparagraphs, starting with No. 1— A. That is, as stated, approximately correct.

RDQ120. How about 2, 3 and 4, and up to and including 7? A. That is approximately correct.

RDQ121. You were asked whether you were interviewed at the hospital in 1945. Do you remember being interviewed? A. I would not call a request to submit information an interview and I believe a further study of this affidavit would show that the information was furnished in response to a letter requesting a statement in some particular case, or a statement of fact about certain questions submitted.

RDQ122. In other words, you supplied certain information to Army authorities and then they transformed it into

this form of an affidavit; is that it? A. I am saying that it appears as an incompleted affidavit to me.

274 RDQ123. Do you have any recollection of a captain named Emil A. Amann? A. I don't remember.

RDQ124. Did you ever run into a First Lieutenant Boudine? A. I don't remember.

RDQ125. What was your physical condition on December 15th, 1945? A. I was not in very good physical shape, you have to remember.

RDQ126. What was your principal problem at that time? A. It was a condition left over from the days of confinement as a prisoner of war—considerable exhaustion of all the organisms and a condition of the nerves, particularly in my head, and it was inclined to make me black out under any strain; and some arthritis, the last stages of endemia, and I was taking considerable treatment at the time.

RDQ127. How much did you weigh then? A. I don't remember. I had been gaining pretty much for some months and I had gotten back to 145 pounds. I had been down to 100.

RDQ128. How much do you weigh now? A. I suppose I weigh about 158.

275 Recross Examination

By Mr. Barnes:

RXQ129. You referred to a report that you wrote. I would like to call your attention to pages that are numbered 95, 96 and 97 in Defendant's Exhibit 3, and ask you whether that is a copy of the report as you recall it? A. That is a copy of the report.

Mr. Barnes: That is all.

I might say, your Honor, in that connection, I do not think the report has any particular bearing on the testimony that Colonel Harwood has given. But in view of the fact there was a reference to the other documents, I just wanted the record to show what that was.

The Commissioner: Any further questions?

Mr. Kissam: No, sir.

The Commissioner: Thank you.

(Witness excused).

(Discussion off the record).

Mr. Kissam: At a conference at your Honor's desk, in the presence of Mr. Barnes, I asked permission to make a statement after the witnesses, Colonel Harwood and Colonel Kramer, had left the witness room. My reason for asking that permission is this:

276 The other day your Honor asked me a direct question as to why I had wanted either to perpetuate the testimony of this group of witnesses—all of whom, with the exception of Miss Clements, are either ex-Army personnel or active Army personnel—or, in place of perpetuation, to have the hearings which we have had.

I stated at that time one of the reasons was that all of the officers except Colonel Quinn had received medical discharges. All of the officers in question were personally present at the time your Honor asked the question. In deference to their feelings, I did not answer your Honor's question as fully as I would have liked to and I would now like to point out something which I feel your Honor probably observed himself.

When I talked to these witnesses in Chicago and in Washington, and chatted with them informally, quite apart from the issues of this case, in my opinion two of the officers, at least, particularly Colonel Harwood and Colonel Kramer, were in really rather rough physical shape. I had considerable apprehension as to how much longer they would be available, either in the sense of being alive or being able to come as witnesses and testify, regardless of the proximity of the hearing.

277 I think your Honor will find that I have been justified in expediting this part of the case, for the reasons that I have just given. In my opinion, both Colonel Harwood and Colonel Kramer are very sick men. I hope that is a complete answer to your Honor's question.

The Commissioner: Yes, I think that puts on the record what I wanted to know.

I might add for the record that it is apparent from the demeanor of these two witnesses that, at best, their memories may fade by further lapse of time.

(Discussion off the record).

The Commissioner: We will adjourn at this time.

(The hearing adjourned at 4:00 o'clock p. m.).

Jt. 12 LUCIAN LORING ROCKE, a witness produced on behalf of the plaintiffs, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Connelly:

Q1. Where do you reside? A. St. Petersburg, Florida.

Q2. What is your occupation, if any? A. I am retired; that, I guess, is the occupation.

Q3. Were you, prior to 1945, associated with the Standard-Vacuum Oil Company and its predecessor companies? A. I was.

Q4. For how long a period of time? A. I joined the foreign service of Standard-Vacuum in January, 1920, and remained with them up to October 1st, 1945.

Q5. Where were you stationed, geographically, during that period of time? A. From 1920 to 1937 I was in the Philippines, except for a few of the early years,
Jt. 13 I was in Manila; stationed in Manila. Then I left for Hong Kong in 1937, where I looked after the Philippines and a couple of other countries from Hong Kong; that was our organizational set-up at that time. Then I returned to Manila in January or early February, 1941.

Q6. What position did you have with the company at that time? A. When I returned to Manila I returned as General Manager of the Philippines.

Q7. Did you maintain that position until the war? A. I maintained that position until I retired, in October, 1945.

Q8. During the period from 1942 to 1945, where were you? A. I was a prisoner of the Japanese from January 2nd, 1942, to February 5th, 1945.

Q9. Directing your attention to the year 1941, prior to the outbreak of war, will you describe for us generally the nature and location of the oil properties in the Philippines of the Standard-Vacuum Oil Company? A. We were engaged in the importation and sale of a complete line of petroleum products throughout the Philippines, in
Jt. 14 every one of the islands in the Philippines. For that purpose we operated a large terminal at Pandacan, a smaller one in Luzon, near Lingayen Gulf, and a fairly large ocean terminal at Cebu, importing petroleum products there into the Philippines. And, then, we had our distribution facilities starting from those terminals, which

involved a complete set of distribution facilities—pipelines, storage tanks, motor equipment, and so forth.

Our sales offices were set up with a Philippines headquarters in Manila, and then we had our own offices for the sales districts in Manila, Cebu, Iloilo and Davao.

Q10. The offices, so far as the management and administration of the company are concerned, were located where? A. For the Philippines?

Q11. Yes. A. Located in the heart of the City of Manila.

Q12. Where, generally, were the comparable facilities of the other oil companies in the Philippines at that time? By other, I mean Caltex, Shell and Tide Water.

Jt. 15. A. All four of the oil companies operating in the Philippines had their main terminal for Luzon all together in the district called Pandacan District; that is a part of the City of Manila. Shell had a small terminal on Lingayen Gulf, right near ours. In addition to ours, in Cebu, I believe—I don't think Tide Water had one, but besides ours, Shell and Texas had ocean terminals.

Q13. I show you a map, Mr. Rocke, entitled "Luzon, Philippine Islands", and ask you if that correctly sets forth the location of several of the facilities you have mentioned on the Island of Luzon? (Mr. Connelly hands map to witness). A. Yes, on the assumption that this here says "Manila"—I am looking at these. I don't know what the symbols are, here.

Q14. You are referring to the four stars? A. Yes. So far as Luzon, it looks correct. That is correct; that represents the location of terminals and sub-terminals, that is, bulk storage plants.

Q15. I show you a second map entitled "Visayan

Jt. 16 Islands, Philippines", and I ask you if that correctly sets forth the location of other facilities to which you have referred in the Philippines? A. That is ours. The second is just for ourselves.

Q16. Just for Standard-Vacuum? A. Yes; that is correct.

Mr. Connelly: With the Commissioner's approval, I should like to offer these maps in evidence, merely so that the Commissioner may more readily follow references to geographical places as they may be made in the testimony.

Mr. Barnes: Just to clarify one point on the first of these, the Luzon map, it refers to "Associated"; I assume that is Tide Water Associated?

Mr. Connelly: Yes.

The Commissioner: Any objection?
Mr. Barnes: Not as offered.
The Commissioner: So received.

(Map entitled "Luzon, Philippine Islands", was received in evidence and marked Plaintiffs' Joint Exhibit 1, as of this date).

Jt. 17 (Map entitled "Visayan Islands, Philippines", was received in evidence and marked Plaintiffs' Joint Exhibit 2, as of this date).

Q17. My attention has been called to the fact that in your prior statement you referred to The Texas Company; is that a reference to the Caltex Company? A. If you are talking about 1941.

Q18. Yes. A. I am liable to do that, I am apt to call them by the old names from time to time.

Q19. By "Associated", you mean what is now Tide Water? A. Which later became "Tide Water Associated", so far as I know, out in the Philippines; but it was originally "Associated" only.

Q20. Referring specifically to the Pandacan facilities which you have mentioned, will you describe in general terms of what those facilities consisted? A. The Pandacan facilities of the four companies were all togther in one loop of the Pasig River, all adjacent to each other, and all of us had facilities on the water-front for receiving cargoes.

Jt. 18 Bulk cargoes involved pipe-lines going to the water-front, storage tanks, an industrial railway to carry the goods to the warehouses where they were stored, large storage tanks—in our own case we had some twenty-two of what we call large storage tanks—a fleet of bulk tank trucks, package trucks, railroad tank cars, the warehouses that I previously mentioned, loading facilities of various kinds, and then we also had in our own plant—this didn't pertain to the other companies—in Pandacan leading facilities for leading aviation gasoline. And we also had another separate plant for making a patented asphalt product, called bitumuls, that was used for runways of airports. That was a patented asphalt product.

Q21. You have stated that all of the installations of the several companies were located along the shore of the Pasig River; were they adjoining, one to the other? A. All four were adjoining. In one case three might touch one—they

were made up of odd purchases of real estate. It was a sort of jig-saw puzzle. We were all together in that one place.

Q22. Looking at it from a standpoint from the
Jt. 19 shore of the river, proceeding from east to west, can you name the order in which the several installations were placed? A. I never thought of it in terms of east and west. I will start with ours and go up the river.

Q23. Go ahead. A. There would be Shell, Tide Water Associated, Caltex, Standard-Vacuum; then would come the Manila Railroad Yards.

Q24. One last reference to the identification of these names; you mentioned "Shell", is that the company which, in 1941, was operating as "Asiatic Petroleum Company"? A. Yes, with their principal trade mark being Shell, so they were referred to commonly as "Shell" at that time.

Q25. Was there, in any of these installations, any can making machinery? A. We had a large can plant there and Shell did, too; and I don't recall in connection with the other companies there. In Cebu, also, we had a large can plant. Those were our two large can plants in the Philippines—Pandacan and Cebu.

Jt. 20 Q26. Directing your attention again to the year 1941, in or about May or June of that year, did you have a meeting with General Grunert concerning the facilities of the oil companies in the Philippines? A. Yes, I recall being called to General Grunert's office.

Q27. Who was General Grunert at that time? A. Then he was the highest ranking Army officer and his title was Commanding General, Philippine Department, U. S. Army.

Q28. What were the circumstances leading up to that meeting? A. Well, I had been having many conversations with Army, and so forth; with regard to that meeting, why it stands out in my mind, I was asked to come over and see the general. Before that I had been dealing with subordinate officers. He sent word that he wanted to see me in his headquarters, which was the first time it was official from the top.

Mr. Barnes: What was the approximate date of that?

The Witness: I would fix that about June. It could be any time from June, or early July. It couldn't be
Jt. 21 later than that.

The Commissioner: 1941?

The Witness: 1941. It was in the midst of war preparations.

By Mr. Connelly:

Q29. You have spoken of earlier meetings you had had with subordinate officers of the Army; with reference to what subject? A. Our supplying the armed forces, all branches of the Army and all branches of the Navy and the Air Force.

Q30. Do you recall the place where that meeting with General Grunert took place? A. It was in his headquarters. Someone called me up—I know I can recall going into the office of G-2, which was a colonel who I had not met. I reported to him and he took me in to General Grunert's office. I recall it distinctly because I never was aware there was a way of getting from Military Intelligence into the General's office.

Q31. Was anyone else present besides yourself and General Grunert? A. When this colonel—Head of G-2
Jt. 22 —took me in, he left. Then there was the Chief of Staff, I can't remember his name, who General Grunert introduced as his Chief of Staff. The two of them stood all the time during this conversation, while I sat down, because they were having a lot of conversation between themselves.

Q32. Will you state in words or in substance what you recall of the conversation that took place at that time? A. As I recall it, General Grunert started by referring to current developments; there was something happening at that time every day that affected the Orient. Then he made some reference to war preparations being made in the Philippines (which he knew I was aware of), such as new units coming in and new equipment coming in.

I recall that I discovered what he had called me for was to ask me to cooperate by doing certain things that he wanted, for which he said he didn't have the money in their budget—all their money was taken care of—and they had to depend on us; that we would be taken over, in the event of war, by the Army, and they wanted to have cer-
Jt. 23 tain equipment there and certain changes made, which they could only do on the basis of asking us to prepare in advance to have it there.

In other words, that was the reason he had sent for me, it was really to ask me to cooperate by doing things that the Army would do later, when they took it over, but they wanted us to do it in advance. That was the gist of it.

Q33. Without going into the details, did those matters have generally to do with securities and protection? A.

Yes, securities and protection. That is practically all of the equipment that was involved.

Q34. Did there come a time thereafter, in or about the middle of 1941, when you attended a meeting with representatives of the other oil companies and representatives of the Army concerning the oil company installations? A. I recall a meeting, called by the Army, of the four companies; and I was asked to go over to another oil company's office, where this meeting was to be held.

Q35. Can you place the approximate time of that
Jt. 24 meeting? A. Sometime in June.

Q36. Who was there, as you recall it, from the Army and who was there from the various oil companies? A. As I recall it, there were three Army officers, representing Shell was the former manager, who had retired and then returned to the Philippines a few months previously.

Q37. Do you have his name? A. H. C. Whittall.

Q38. Go ahead. A. Mr. Roesholm, manager of Caltex, Mr. Hoffman, representing Tide Water Associated, and myself.

Q39. Do you remember the names of any of the Army officers who were there? A. The one who called the meeting was Colonel Drake.

Q40. Who was Colonel Drake? A. Colonel Drake was the Philippine Department Quartermaster on General Grunert's staff.

The Commissioner: Was this meeting before or after your meeting with General Grunert?

The Witness: I couldn't be certain whether it
Jt. 25 was before or after. Of the two meetings, I can't place them in relation to each other. It might have been before or after. There was nothing in either meeting —they were on the same subject—but nothing that could jog my memory to remember whether one came before the other.

By Mr. Connelly:

Q41. You place the meeting as having been held at the offices of one of the oil companies; not your own, I take it? A. I was asked to meet at another oil company's office.

Q42. Will you tell us again in words or in substance what was said by various persons at that meeting?

Mr. Barnes: He mentioned only one of the Army officers by name. Do you know the names of the others?

The Witness: Digging out of the haze, I think there was an officer by the name of Harwood.

By Mr. Connelly:

Q43. Were these officers all from the Quarter-
Jt. 26 master's Corps? A. Yes. At that time there were a lot of changes of officers below the grade of colonel—there were a lot of changes going on, and it was kind of hard to keep track. I know there was Colonel Drake, I am quite sure there was Major Harwood and I am not sure about the third. I could narrow it down to a few people, but I am not sure. I can't see his face at that meeting.

Q44. Will you tell us what took place at that meeting, as you recall it? A. General Drake referred to all these—I am sure Harwood was there—he referred to all these reports and surveys, and so on, that had been made of our facilities; and, as the Department Quartermaster, said in the event of war they were going to take us over and take our personnel over, also; and that while they had all the data as to what we had on equipment, physical plant, they realized as to product that the records as of a certain time would show a certain situation, they would go in there and find the tanks and so on, but they might not find the product there at all, because it was being turned over all the time.

The way the general situation looked in the
Jt. 27 Orient, they felt that the oil terminals must be kept full, and that the reason he had called us was to arrange with us to agree that we would keep all our facilities full of a product; which, obviously, we couldn't do. I recall having to explain to him why that was a physical impossibility. And then we subsequently agreed, if we would keep 50 per cent as a group—in other words, 50 per cent of capacity—that that would be satisfactory.

That 50 per cent was arrived at in conversation with them, and the officers talked about how much they needed and it was agreed that 50 per cent of capacity of the four companies at Pandacan would be enough.

Q45. You say that the four companies as a group—you mean the aggregate capacity? A. Yes. We would have to work as a group to have any such agreement worth anything.

Q46. Was anything said at that time concerning reports to be made? A. Yes. Having agreed that we would keep 50 per cent, he said, also, that they wanted to know how

we stood. There was no question of doubting our word, but they wanted to know all the time what was
Jt. 28 there. We discussed the type of report, agreed on it, agreed when we would submit it currently and to whom we would submit it.

Q47. Did you thereafter, between that period and December, continue to furnish those reports? A. Immediately after that meeting; I know, our company, the report always came to me before it went up to Army Headquarters right up to the start of the war.

Q48. The war began on December 8th, 1941, Philippine time. Did you attend a meeting shortly after the outbreak of the war, attended by representatives of the Army and by representatives of the several oil companies with reference to their installations? A. Yes. After the war started, the first meeting that I attended where the oil companies were present with the military was about—the war started on a Monday, and this was about Friday—about the 12th of December, Friday the 12th.

Q49. Where did that meeting take place? A. It took place at a San Beda College.

Q50. Located where? A. In Manila. The Army had been bombed out of their place. That was a strange place, and I discovered the Army Quartermaster was
Jt. 29 there.

Q51. Who was at that meeting representing the Army, as you recall it? A. I recall there was quite a group. I would say about half a dozen Army officers, several civilians up at the Army end of the table when I came in, and I can recall three or four of the names.

Q52. Will you give us the names as you recall them? A. Colonel Drake, Major Kalakuka.

Q53. Was he also in the Quartermaster Corps? A. Yes. Major Kalakuka was Colonel Drake's—he was the executive officer for Colonel Drake, I believe—yes, executive officer. Colonel Bersina.

Q54. What was his position? A. Colonel Bersina was an old-timer in the Philippines whom I hadn't seen for years, and then popped up in these war preparations; and then I found out in these meetings what he was going to do.

Q55. Was he also in the Quartermaster Corps? A. Yes. He was an old quartermaster officer.

Q56. In addition to the ones you have mentioned and whose names you recall, were there others present from

the Army at that meeting? A. I can recall Colo-
Jt. 30 nel McConnell, Colonel Quinn—I think I have named five or six. There were half a dozen there. There might have been more, standing around.

Q57. Were there any civilian employees of the Army there, as well? A. Yes, there were two or three Manila people that I knew, and I discovered they had gone with the Army then. There were three there, all I remember at that meeting.

Q58. Do you remember the names of any one of them? A. A man by the name of Coleman, Zeitlin, and a third one whose name I can't remember, a Manila civilian who, I discovered, was with the Quartermaster.

Q59. For the oil companies, whom do you recall as being there? A. I brought along with me Mr. Larsen.

Q60. Who is he? A. My assistant manager.

Q61. Mr. Christopher Larsen? A. Yes. For Caltex, Mr. Roesholm was there, Mr. Murray, his assistant manager. For Shell there was Mr. Crawfurd, Mr. Lloyd, Mr. Wooding, and I am sure that Mr. Whittall was
Jt. 31 there, although he had left the Shell Company, because I can recall his talking at that meeting. He represented himself for the British Government, I believe.

Q62. What was Mr. Crawfurd's position? A. Mr. Crawfurd was general manager of Shell. Mr. Wooding was his assistant and Mr. Lloyd, that I referred to, I had known as the assistant general manager in Hong Kong when I was there, but he was in the Philippines then.

Q63. Was anyone there representing the Tide Water Associated? A. They were represented by Mr. Hoffman alone. As I recall, he didn't have anyone else with him.

Q64. Will you state your recollection as to what was said at that meeting by the several persons present there, in words or in substance? A. Colonel Drake is the one who had called the meeting. Colonel Drake gave a little, short speech. The war then had been on four or five days. He thanked us for the way things had worked out and said that now the Army had got straightened out and they could really start giving us proper directions. They had
Jt. 32 our facilities, but we had been left more or less without directions, now we would be fitted into the Quartermaster Corps and that hereafter we would take our orders from Colonel Bersina; and he would turn the meeting over to Colonel Bersina, who would explain to us how the Army operated and how we were to operate as a

part of the Army. Then Colonel Bersina took over and conducted the meeting from then on.

Q65. Do you recall the substance of what Colonel Bersina had to say with reference to Quartermaster Corps routines? A. Colonel Bersina explained the set-up of the Quartermaster for supplying troops in the field, from the Army viewpoint, and he started with the front and went all the way back to the Pandacan facilities. He said that not only were they going to continue the Army having Pandacan, but they wanted to take service stations, up-country bulk plants, and our personnel up-country to work that in, which was a new development.

Q66. Continue. A. That is not just in reference to ourselves; this is in reference to all the companies. So
Jt. 33 then they discussed details, started to discuss details, and Colonel Bersina said that various officers would take care of the details, as to taking over service stations, as to taking over up-country bulk plants.

Also, I recall that is where the man Coleman was mentioned. He said hereafter orders to us for operation of Pandacan would be transmitted through Mr. Coleman; Mr. Coleman would represent him.

Q67. That is the same Mr. Coleman whom you identified as being a civilian working for the Army at that time? A. That is right.

Q68. Was there at that meeting, Mr. Rocke, any specific discussion of any written document with reference to the oil companies' properties? A. It is my recollection that when Colonel Bersina wanted to break up the meeting, he told us that different officers would get in touch with us; he said that McConnell would take care of the contract end of it, because that was ordinary procedure. The Quartermaster would tell us they wanted something or
Jt. 34 wanted to do something through the years; later the officer who was called the Contract Officer would come around and ratify what had already been agreed upon and in most cases had already been done. But he was the one who put the final chop on it that it was official.

Q69. Following that meeting, did you have any further discussion on the subject of any written document confirming the arrangements made? A. Yes. I went to General MacArthur's Headquarters about ten days after the start of the war, which would make it about the 18th—17th or 18th of December. There was a lull right in that time, at least, a lull so far as I was concerned, where I had caught

up with my work and had a chance to think things over, and I started to get a little worried—

Q70. Do not tell us what was going through your mind; just tell us what you did about it. A. I saw General Marshall, who was the Deputy Chief of Staff, and I told him —I can say what I said and not what I thought?

Jt. 35 Q71. Yes. A. I see. I told him that I was concerned, that I had done the best in cooperating with the Army up to that point and I thought the least the Army could do was to give me something in writing, because some day I would have to account for the four million dollars that I had turned over to the Army without even a letter or requisition or contract, or anything. I thought the least they could do was to give me something.

He agreed that I was entitled to it and called in to the next officer—I know he turned around and called Colonel Drake. He said, "Rocke is here and wants to know when he will have to confirm all this." Drake said, "McConnell was supposed to handle that for some time, and I will go into it. I know he is working on it"; and in due course I could count on getting it.

General Marshall then asked me if that was okay and I said yes, as long as I knew it was coming. McConnell, to my personal knowledge, had been a Contract Officer who could bind the Government.

Jt. 36 Q72. Did you thereafter receive any such written document from either Colonel McConnell or Colonel Drake? A. Nothing was ever received in my office, to my knowledge.

Q73. I should like to direct your attention to the period of time directly after Christmas Day of 1941, and I will ask whether you attended a meeting within a day or two thereafter, attended by representatives of the Army and by representatives of the several oil companies? A. Yes, I was called to a meeting in General MacArthur's Headquarters on, I place it as the 27th or the 28th of December. I was called over there and I knew where I was. I was able to know that it was a general meeting of the oil companies, because there were two other oil men; I think I was in an air raid shelter when the messenger came, but I know we talked it over and there was apparently a general meeting.

Q74. Do you recall the names of any of the persons present at the meeting? A. In the—

Jt. 37 Q75. In the air raid shelter? A. Yes. I recall, for Shell, Mr. Crawfurd and I think Mr. Wooding. For Caltex, Mr. Roesholm. Mr. Hoffman was there and, if I am not mistaken, I took a member of my staff with me besides my son. I took my son with me.

Q76. Who was there for the Army? A. When I got there I went to General Marshall and he told me that this meeting was taking place, and he took me over and introduced me to an officer; that was the first time I met him. His name was Casey.

Q77. Do you remember his rank at the time? A. As I recall it at that meeting, he was a full colonel. They were changing ranks frequently there. One day you would see an officer and the next day he would have another rank, upward, of course.

Then I saw the representatives of the other oil companies, and I think there was only small talk there around Colonel Casey's desk when a big air raid started. Then we adjourned down to the operations room, which was also the air raid shelter for MacArthur's Headquarters
Jt. 38 and also where they ran field operations. The meeting then went ahead down in this operations room.

Q78. What do you recall was said, in words or substance, by the different persons there? A. Colonel Casey said that he was not going to look after the oil terminals, that it was imperative that we double up and get things twice as fast as we were getting it out, because the Army had to get it out of Pandacan. We had been working day and night and didn't see how we could do it, but he stressed it and said they would provide additional men and we had to tell our personnel to redouble their efforts to get it out.

He also mentioned, if the Army didn't get the stuff out in time, that they might have to destroy it and might have to destroy the equipment, but we would get our orders from him in due course about any destruction. I can recall the argument that ensued there, that none of us was going to have anything to do with destruction with the Japanese just coming down in planes. So we adjourned the
Jt. 39 meeting and Casey agreed that he would take care of that feature. All we had to do was get the stuff out.

Q79. I am not sure that I understood exactly what you said as to Colonel Casey; was he or was he not going to do anything with reference to the oil company properties?

A. He brought up the possibility that they might have to destroy product and equipment. His first concern was to get everything out. He said, "If you can't get everything out, we will have to destroy some product and equipment, also", but he would tell us; if we had to, he would tell us. We told him we weren't going to do that.

Q80. Did he say anything as to whether he himself or anyone in his particular division would take any part in the operations or control of the oil company plants from then on? A. It was my understanding that from then on he was going to be the boss, he was the new boss and our orders would come from him.

Mr. Barnes: I object to the witness' understanding; I think we should have the statements made.

Jt. 40 The Commissioner: Sustained.

(The record was read)

Q81. In answer to a question which I asked you earlier as to what took place at that conversation, you are reported as having said that Colonel Casey said he was not going to look after the oil terminals. Was that your testimony? A. No, certainly not. That was not meant to be my testimony. It is just the contrary.

Q82. I wasn't sure whether you said "not" or "now". A. I may have spoken indistinctly and I meant "now". I meant Colonel Casey was now going to take care of the oil companies.

The Commissioner: We will take a five minute recess.

(A short recess was taken).

By Mr. Connelly:

Q83. Just before the recess, Mr. Rocke, you told us about the meeting that took place in the air raid shelter, and I think you described that as being part of

Jt. 41 General MacArthur's Headquarters. Was General MacArthur there at that time or had he already left? A. His Proclamation had been published one or two days before that, that he was leaving for Corregidor with President Quezon, removing his Headquarters to Corregidor.

Q84. Following that meeting to which you have testified, Mr. Rocke, did you receive a written communication signed by Colonel Casey? A. I did, a day or two subsequently to that meeting.

Q85. I show you what purports to be a photostatic copy of a letter dated December 25th, 1941, written on the letterhead of Headquarters, United States Army Forces in the Far East, signed "By command of General MacArthur", signed "Hugh Casey, Colonel, C. E. Engineers", and addressed to Asiatic Petroleum Company, Tide Water Associated, Caltex, and Standard-Vacuum; and I ask you whether that is a copy of the letter to which you just testified? (Mr. Connelly hands photostat to witness). A. That is a photostat of the letter that was delivered to me.

Jt. 42

Q86. What did you do with or what happened to the original of the letter that was handed to you? A. I called a member of my staff and sent him right over with the original letter and had photostatic copies made of it for distribution to all my department heads and told them to hang on to the document, and I kept—this is the negative, this is the one that copies were made from. I kept the negative myself and put that in my passport, which I was carrying right along, and the original was left on my desk. The last I saw of it it was on my desk, in Manila.

Q87. When you say this copy was in your passport, you refer to this particular piece of paper? A. Yes, it was carried by me in my passport all during the Japanese occupation.

Mr. Connelly: I should like to offer that letter in evidence. With the Commissioner's permission and if counsel for the Government does not object, in order to preserve the paper which the witness has just identified, I should like to substitute another photostatic copy.

Jt. 43

Mr. Barnes: I have no objection to that.

The Commissioner: Any objection, Mr. Barnes?

Mr. Barnes: No objection.

The Commissioner. So received.

(Photostat of letter dated December 25, 1941, on letterhead of Headquarters, United States Army Forces in the Far East", signed "By command of General MacArthur; Hugh Casey, Col., C. E. Engineers", addressed to Asiatic Petroleum Co., Tide Water Associated, Caltex & Standard-Vacuum, received in evidence and marked Plaintiffs' Joint Exhibit 3, as of this date).

Q88. At the time that the original of this letter, Plaintiffs' Joint Exhibit 3, was delivered to you, Mr. Rocke, did

you also receive additional signed copies of that letter for distribution to others? A. This photostat?

Jt. 44 Q89. Yes. A. I received just one, with a check mark for me, which was signed by Colonel Casey.

Q90. You told us that you last saw the original of this letter on your desk at Manila? A. Right.

Q91. At about what date? A. The last time—either the night of December 31st or the morning of January 1st was the last I saw my office in Manila.

Q92. What happened, so far as you know, to the records of the Standard-Vacuum in Manila from that time forward? A. At the end of the occupation, when I was liberated—

Q93. Before you get to that point, was anything done with the records in Manila prior to the time when the Japanese came in? A. Yes, I had a couple of members from my staff busy burning records on the 30th and the 31st of December. We burned all records of importance, that we thought were of importance. We didn't want

Jt. 45 them to fall into the hands of the Japanese.

Q94. Were there some records that you left there? A. I should change that; I should have said correspondence. They were busy burning correspondence; records, so far as accounting records, were all left intact. I made that decision just about that time. I told the chief accountant we would close our office from the accounting standpoint on the basis as though we were going to be temporarily suspended, and would reopen after the American Forces came back—in a week or two, at that time, we thought.

Q95. Following your liberation, did you make any further search, or any search, for the records which you had not destroyed prior to leaving the Manila office? A. Yes. We were liberated on February 5th, the battle for Manila was just starting then, and in a few days after that I went down to the Provost Marshal and asked him to have it arranged to send me down in a jeep with some soldiers. We had just captured that side of the river where our office was. When I went down there, I couldn't even

Jt. 46 get inside. It was all smashed up and there were guards around it. They thought it was mined, also. It was obvious to me, looking at it, it was caved in where our accounting vault was. That was on the second floor. The whole second floor was just caved in and there were no records there—just rubble.

Q96. Did you thereafter in fact recover any records? A. I gave it up as hopeless, right there.

Mr. Connelly: You may examine.

Cross Examination

By Mr. Barnes:

XQ97. What was the organizational set-up of your company in the Philippines during this period? You said you went back there as general manager in 1941? A. I took over officially on March 1st.

XQ98. Did you have an assistant; was there an assistant general manager, or anybody by that title? A. I had two assistants who were called—I see what you are getting at—they were called sales managers. We were Jt. 47 trying to avoid designating anybody as assistant general manager, as we didn't know who was going to take my place later.

XQ99. Who were they? A. Mr. Larsen and Mr. Ames.

XQ100. Who else did you have in your business office as executives? A. We will start with one of the assistant managers, who goes under the title of Sales Manager, Refined Products; he had two Americans—you are referring to Americans or Europeans?

XQ101. Yes. A. Mr. Larsen, in turn, had two American assistants who were called Assistant Sales Managers, Refined Products.

XQ102. Who were they? A. Mr. E. S. Richards and Mr. A. Aymami.

XQ103. On the other side, your other sales manager covered what? A. Lubricating oil.

XQ104. Did he have assistants under him? A. Not in the sense of assistants. He had a couple of general Jt. 48 sales representatives, I think the title was. His work was not sufficient to necessitate an American assistant. He had Filipino assistants.

XQ105. That was Mr. Ames? A. Mr. A. P. Ames.

XQ106. Organizationally, where did the terminal properties fit in; did the terminal superintendents report directly to you? A. No. We had what is called an Operations Department. For administration, theoretically, the Operations Department looked after administration of terminals.

XQ107. Who was head of the Operations Department? A. L. A. Garrard. He was the head.

XQ108. Did he have any assistants other than the superintendents? A. Yes. Then we had a man whose title was

Plant Superintendent. He was the expert, because he had formerly been a terminal superintendent. That was M. E. Johnsen. Then we had an engineer; his title was either Operations Assistant or Operations Engineer. But
Jt. 49 he would be assistant to the Operations Manager. His name was Ramme.

XQ109. You later had the anomalous situation of him directing you? A. He went into military service and I saw him in MacArthur's dugout the 26th or 27th.

XQ110. The time you had this conference with General Casey? A. Yes. I saw him in the dugout and I didn't know what his job was and I said "Hello", and that was the last I saw of him.

XQ111. Who else was there in the Operations Department other than the plant superintendents; anybody? A. I don't think there were any other Americans. There was a manager, engineer, plant expert—there were three; that is, Philippine operations.

XQ112. Then you had a superintendent at each of the plants shown on Plaintiffs' Joint Exhibits 1 and 2? A. One or more. I had seven at Pandacan. I am talking about Europeans. I am keeping local staff out.

Jt. 50 XQ113. Mr. Barclay was plant superintendent, with assistants under him? A. Mr. Moffat.

XQ114. What was Mr. Barclay's position? A. He was assistant to Mr. Moffat. If anything happened to Mr. Moffat, he was the understudy for Mr. Moffat at that time, because one had just as much rank as the other except in that situation; for the time being, we had designated Mr. Moffat as the Terminal Superintendent. So the others then were assistant terminal superintendents.

XQ115. They simply had specific responsibilities assigned to them? A. Yes. The terminal is all split up; somebody in charge of can manufacture, somebody in charge of filling operation, somebody in charge of aviation plant.

XQ116. Did the same thing operate at other terminals; for example, at Cebu? A. At Cebu we only had one European, one terminal superintendent.

XQ117. Who was that? A. E. L. Marshall.

Jt. 51 XQ118. These various bulk plants, did you have a European at each plant? A. No, we had local staff.

XQ119. You referred to the fact that you took your son with you to one of these meetings. Did he fit into this or-

ganization, was he an employee of Standard-Vacuum? A. No. I was asked who was at that meeting, and that meeting stood out in my mind because I gave him a chance to see how they were running a war. My son was just a boy of fifteen.

XQ120. You referred to the fact that Standard-Vacuum had twenty-two of what you described as large storage tanks. What makes a tank a large one, how big is that? A. A large storage tank system, how you decide that is how it is hooked up to our main pipe-line system. If you had a tank at Pandacan that you could start at the water-front, open the valves and start at the water-front and pump a product into this tank somewhere in the terminal, that would be one of our large tanks.

Jt. 52

XQ121. Even though it was a hundred barrel tank? A. There were some that were quite small.

XQ122. You listed these four companies in their relative positions along the Pasig River; how did the areas they occupied compare, did they each have approximately the same size plant site? A. No. Relative size, to us, is a matter of capacity.

XQ123. In capacity, how did they compare? A. Shell and ourselves, we could store about twenty million gallons and Shell was about the same. Caltex, I would say, was about half the size, as to capacity, as to either our plant or Shell; and Tide Water Associated was smaller than that, possibly a third. I know it was the smallest of all.

XQ124. You mean a third of the twenty million or a third of ten million? A. Roughly, we figured we could take care of twenty million gallons. I know Shell was just about the same size. Texas was just about half, that would be ten. Tide Water, I know, was smaller than Caltex and I would guess about five or six million gallons total.

Jt. 53

XQ125. You referred to two meetings you had about the middle of 1941; one was with General Grunert and the other was General Drake. Did you make any report with respect to what transpired at those meetings to the head office of the company, in this country? A. Immediately after the one with General Grunert, indirectly, I made a report.

XQ126. What do you mean, "indirectly"? A. I will explain. My instructions had been changed, back here in Washington they got in contact with the New York office and they were worried about what was being put in cables or radios. So our usual procedure was changed and all I

had to do, if I had any recommendation to make, simply by some phrase I would indicate to New York I was sending this on account of the Army or Navy. That is what I mean, "indirectly".

Following that meeting with General Grunert, I placed what I wanted there before New York by cable,
Jt. 54 but I didn't mention General Grunert's name or anyone else, but they were able to read between the lines. And I said there was other equipment we had under consideration, which meant, the way I phrased it, the military forces wanted it. I wasn't sure in my own mind whether I would be prepared to recommend it, although New York would have said go ahead and do it, anyway.

XQ127. You said you called this to the attention of New York by some phrase. You mean you had some code? A. Yes, through the years; so anybody at each end, they know your phraseology and it gives a lot of information so some outsider couldn't make it out. There was no question back here about knowing whether the Army wanted it.

XQ128. What changes did General Grunert want made in the property? A. We had to change all gates, and everything. He wanted practically everything to go in through a certain entrance; he wanted our gates changed, he wanted a special type of gate put in, he wanted
Jt. 55 all our tanks camouflaged, he wanted us to put in a new fire engine. He wanted us immediately to put in a system where our employees had passes and pictures, and I think there was a thumb-print on it, too. The things he was mentioning were familiar to me, because I think I knew what report he was getting those out of. I didn't know whether he knew whether I had seen it or not, but I figured it was coming out of a G-2 report that I had gone over.

XQ129. When did you go over the G-2 report? A. I would place it about May. There were scores of reports being made by every branch of the Army and Navy, and all were the same thing.

XQ130. Was this some report that related particularly to the oil companies, only? A. It was a part of a general survey which related to the oil facilities. It related to the oil facilities, how they would be integrated into the Army. It was given to me to read to help G-2, for me to correct it, and so forth; to help them out on technical details.

XQ131. You say he wanted a new fire engine, among other things. Why was that? A. We had
Jt. 56 the type of fire engine that is known as a "hot-ball engine". It is very slow starting. By the time you got the engine under way pumping, if there was much of a fire it would be outside the engine pump-house.

XQ132. Did you place an order for a new engine? A. I think we received that. The most expensive equipment he wanted; we could make cans and he wanted us to make drums. That was the most expensive layout in those recommendations; and we placed those and we never got it in operation, I don't believe, as there were one or two parts of the machinery missing when the war started.

XQ133. Did you get the new fire engine? A. We got it and it was installed.

XQ134. That was a mobile unit? A. No, I am talking about our pumping lines.

XQ135. In other words, what he wanted you to do was put in a new pump? A. Yes. We had a pump that suited us, but wouldn't be the kind the Army would want.
Jt. 57 They would want something very modern and up-to-date, which is nice if you can afford it.

XQ136. I take it from your description of the old one it would not have hurt any to have had a new one, even from the standpoint of the company? A. That is right.

XQ137. What about the changes in the gates, and so forth; did you do anything about that? A. We placed an order for special gates. As I recall it, we did not then put the system in on the employees, we did that at a later date.

XQ138. You referred to the fact that in your cable to this country there were some of the items that General Grunert mentioned that you said you still had under consideration. What were those, that you were not sure you could recommend? A. I know one of the things—by some phrase I tipped New York off that, as far as I was concerned out there, I didn't think the expenditure was warranted—that was the camouflaging. That involved buying paint, and so forth.

XQ139. Did you do any camouflaging? A. No.
Jt. 58 XQ140. What else did he recommend that you did not do? A. There might have been some odd things—after all, my orders were more or less, if necessary, whatever the Army wanted, to give them anything they wanted but to try to talk them out of it if, in my judgment, their ideas weren't sound. That was one idea,

on the camouflage, because I didn't consider his ideas were sound.

XQ141. Am I correct in understanding that at this meeting there were only three people present; you, General Grunert and his Chief of Staff? A. That is right. I reported over to G-2, was brought by a G-2 officer to the head of G-2, whom I had never met before. I met him—

XQ142. Who was he, do you recall? A. Colonel O'Rear. He was the head of G-2. I had been in contact with G-2 personnel for months on all kinds of things, but he was on General Grunert's staff; and he was back in his lair, so I was brought in to him and that was the time I met him.

Jt. 59 And then he had a passage in back of his desk where you would go through and you would come right out into General Grunert's office on the Pasig River. But he left; he just took me in and said, "This is Rocke, of Standard-Vacuum."

XQ143. So there were only the three of you there? A. Yes, General Grunert and his Chief of Staff, whose name I think was Smith, but I don't recall, and myself. I sat down and these two just kind of walked around—paced around.

XQ144. Your other meetings were with subordinate officers and— A. By "subordinate officers", I mean anyone below the rank of general.

XQ145. You were referring to your earlier discussions with men in G-2? A. From the time I took over, on March 1st, three-quarters of my days were spent in somebody's office of the Army, or they were in my office.

XQ146. To whom from the Army do you recall talking?

Jt. 60 Mr. Connelly: I do not wish to interfere with the development of the questions here, but that covers a wide range of territory. The witness has testified that he had been in more or less constant communication with officers of the Army and Navy over a period of many months. I think to review in detail each conversation or conference which he may have had with any officer would get us pretty far afield.

The Commissioner: Objection overruled.

A. If there was any way to get a roster—I talked to nearly everybody in the Philippines. My job was to take care of the military. That is why I was sent back there. I was handling all the negotiations. I was trying to handle it

all, so as to let my company operate, keep them free, and I did the contact work.

XQ147. Did you make any record of your discussion with General Grunert; did you make any written notes of it after you got back to your office? A. There was a memorandum that went down to the Operations about getting that equipment. I can't remember the memorandum, but my procedure would be, as soon as I got to the
Jt. 61 office, to call my private stenographer and dictate a memorandum of the conversation and dividing it up to where it was to go. Operations would have gotten a copy of the conversations.

XQ148. That would refer to General Grunert and the fact it was his request? A. I doubt if I would say General Grunert. I would probably say I was talking to military authorities. We were trying to keep away from names in correspondence and in cables and radios; my orders were to keep away from names as much as possible.

XQ149. Have you seen a copy of any memorandum of that type which you prepared? A. No, I haven't seen any copies of anything in that 1941 period.

XQ150. What I am trying to be sure of, you are testifying just on the basis of your independent recollection of what transpired at that meeting? A. Yes.

XQ151. Had you ever seen General Grunert before? A. Not officially; but socially, yes. I had never been in his headquarters before.
Jt. 62 XQ152. Where were his headquarters located? A. Fort Santiago, on the Pasig River. It is part of the Walled City.

XQ153. Would you tell us, as close to the words General Grunert used as possible, exactly what he said when you came into his office—how he opened the discussion? A. As far as words are concerned, I can pull out words—do you want the gist?

XQ154. I would like to come as close to his words as possible, to distinguish from an interpretation of what he said. A. I would say that as soon as we started talking business that he said there had been some development, something the Japanese had done, war was getting closer; referred to their war preparations, putting the Army in the Philippines on a war footing. And I know he referred to the situation in regards to oil and gasoline, and so forth, that they were absolutely dependent on us, not only for war reserve but for current operations. Unfortunately,

they couldn't remedy the situation, they would simply have to depend on us. Then he went on to explain what he wanted.

Jt. 63

XQ155. Listing these various items? A. Yes. It wasn't in the nature of a list; in other words, he started talking about Pandacan in general—were we being careful about sabotage, and so forth—and, along that line, "I understand you have quite a few entrances. Don't you think it would be better if you had only one entrance there? That is the way we would like to have it; we don't like the type of gates that you have."

In the back of my mind, I thought I knew in the back of my mind that conversation, what hat he was pulling that out of. It had a familiar ring.

XQ156. You knew exactly what he was driving at? A. Yes. I had an idea it was from the specific report which had been drawn up by G-2 and which had been brought over by messenger, and which I had gone over. I was told to keep my mouth shut, but would I go over it and call their attention to any inaccuracies.

XQ157. Do you know whether there was any stenographer in the room during that discussion; was any stenographic transcript made? A. In General Grunert's room?

Jt. 64

XQ158. Yes. A. No. There wasn't any at any meeting that I ever attended. If I were talking personally with an Army or Navy officer, under those conditions, if he called a stenographer I would say, "I am sorry; you come over to my office."

XQ159. You said some time during the general period you talked with General Grunert; you were not sure whether it was before or after you had this discussion with General Drake and other officers of the Army? A. Yes, Quartermaster meetings.

XQ160. That was held at the office of one of the oil companies? A. Yes. It wasn't held in my office, because I was quite indignant about it.

XQ161. Because they used some office other than yours? A. Yes. We were cooperating the way we were—I didn't understand why I was being called over to another office. We had turned our organization upside down to fit it into the picture for the Army and Navy, and I was amazed I was asked to go to some other office. They knew I was busy.

Jt. 65

XQ162. Each company had only one representative there; is that right? A. Which meeting?

XQ163. The one with General Drake in the middle of 1941. A. Yes, I would recall only one representative; and, in the case of Shell, it was a man who had been manager but was no longer in active service, but I understood he was a British agent.

XQ164. Drake and Harwood are the only two Army officers whose names you remember for sure as being at that meeting; you said there was a third but you could not recall which of two or three he might be? A. I think Kalakuka was there, but I am not positive about that. I only think that because usually General Drake had his executive officer along.

XQ165. Both of these meetings took place before MacArthur's appointment as head of USAFFE? A. Jt. 66 Yes. That meeting with Drake, he was on General Grunert's staff.

XQ166. As Department Quartermaster? A. Yes. Then, when General MacArthur took command of the Army forces, General Grunert left and General Drake moved over to General MacArthur's Headquarters. And right in that time he jumped from colonel to general—somewhere along there.

XQ167. Referring to this meeting with Colonel Drake, did he open that meeting; did he start the ball rolling? A. Yes.

XQ168. Incidentally, do you know which oil company's office you went to for that meeting? A. I think it was Asiatic. Our office was on one side of the river, the other three companies' offices were across the river, near the foot of the James Bridge. It was somewhere over there in one of those three offices. I think I can remember the office, but I am not sure.

XQ169. What did General Drake say in opening the meeting, using his exact words as closely as you Jt. 67 can remember over this period of time? A. I can boil down what he said. He said they were thinking it over and they were all set to take us over and then it dawned on them, while they thought what we had over there, they might come in tomorrow and take us over and find what they thought we had we didn't have. I am talking about product, you see.

XQ170. You are talking about product? A. Yes. He starts off and says, "We are going to take you over"—I will paraphrase. Is that what you want me to do?

XQ171. I want it as closely as possible. A. "Going over

this situation at Pandacan, we thought we knew just what you had over there. But we have now discovered that despite all the data that we have obtained from you, that it is changing from day to day and, therefore, if we had to go in tomorrow and take you over tomorrow, you might not have what today your report shows, because that product was flowing in and out."

XQ172. What types of reports was he referring to; had you been rendering reports prior to that time? A. Special reports?

Jt. 68

XQ173. Yes. A. Enough reports to fill this room, most of it on the same subject, went to every Quartermaster unit; to the Navy. We were just driven crazy with reports.

XQ174. What type of reports were those? A. They wanted to know what facilities; every time a Quartermaster officer reported into the Philippines, the first thing he did was come to our office and list the information on our facilities at Pandacan.

XQ175. Had you been making any kind of special reports on product? A. No.

XQ176. Up to that time you had not? A. No. An individual officer would call up on the telephone or would come in from either the Army or Navy, or Air Force, and want to know how much we had of this or that as of a certain date. But we had not made reports subsequent to that meeting.

XQ177. To what Army officer did you submit that report? A. That report was submitted, I think, to the Depot Quartermaster. I think it was decided at that meeting, to the Depot Quartermaster.

Jt. 69

XQ178. That was McConnell? A. No, he wasn't the Depot Quartermaster then. I had a lot of conversations with McConnell before he went up in rank. The colonel who was officially the Depot Quartermaster I didn't know at that time. I never talked to him.

XQ179. McConnell eventually succeeded him? A. Yes. On that switch-over in USAFFE—no, Colonel Bersina was the man who became Depot Quartermaster. But at the time we are talking of now, Bersina—I don't know that he was back in active service. But that report was sent to two other places, I might say.

I then arranged to send a copy to the Depot Quartermaster, and the Navy was always after this information. I suggested to the Navy that since the Army wanted this

information, wouldn't it suit their purposes? I was trying to head off all these requests for information.

XQ180. As far as possible, you would make a
Jt. 70 single form of report? A. Yes. The Navy said they would take the one I was making out for the Army. They were very cooperative about it. I arranged the same thing with the Commonwealth, so that report not only went to the Depot Quartermaster, but the Oil Administration of the Commonwealth and the Navy.

XQ181. How often did you submit that product report? A. It is my recollection twice a month, as of the 15th and 31st.

XQ182. Your agreement at this conference with Colonel Drake was that you would keep your storage tanks at 50 per cent of capacity—at least 50 per cent of capacity? A. That is, the group.

XQ183. The group as a whole? A. We pointed out to him—first we cleared up the point in his mind—that it was physically impossible to keep 100 per cent storage. When we got that straightened out, then we pointed out that no one company could agree to keep 50 per cent, but
Jt. 71 if the companies as a group, if we transferred products back and forth, we could guarantee, as a group, 50 per cent. I might have a tanker coming in and I would run out of gasoline so as to take a full load if the other people were willing to lend me gasoline if the tanker was late, and I would do the same for them.

When the war broke out, I had some other people's product and they had some of mine, under this Army arrangement. We were working more or less—we weren't worrying about anti-trust, we were working with the Army.

XQ184. Did you make any report to your home office with respect to that meeting with General Drake? A. On the product and keeping the product?

XQ185. Yes. A. Yes, not naming names, but that whole conversation was all boiled down and sent home.

XQ186. Was that done by cable or letter? A. I think by cable.

XQ187. Have you seen that cable? A. No.

Jt. 72 XQ188. Have you looked for it? A. The last I heard, the office was trying to find it. And there are a number of others that I can remember faintly. I would like to get ahold of those cables, they would help me get the whole thing back in my mind. They are looking for them.

XQ189. During this same period of time, or later? A. What?

XQ190. The cables you are referring to. A. From the 8th of December to the 27th of December. I would like to see those, particularly.

XQ191. Were you sending cables at that time? A. Up to the 27th. I was sending and getting cables right up to that time. They weren't cables, they were radios. The cables had been cut but the radio transmitters were working.

XQ192. After that meeting with General Drake, were you present at any of the formal meetings with other representatives of the oil companies and the officers of
Jt. 73 the Army? A. I can't recall any meeting of the representatives of the oil companies and either the Army or Navy from that time, around June or July, until war was actually on.

XQ193. I suppose you still had your visitations from individual officers? A. Constantly. You are referring now subsequent to General Drake's meeting?

XQ194. Yes. A. Yes. I was down every day at the Depot Quartermaster or at General MacArthur's, after he got fixed up, or at Admiral Hart's Headquarters, or at the Naval Supply Officer's office, out at Cavite; or at the Air Force.

XQ195. Your company, during that period, was regularly supplying petroleum products to the armed forces in the Philippines, were they not? A. Yes, we were continuing to do it regularly, and then we did a lot of special things. As they got on a war footing more, that affected us. I was like a messenger boy because it was all highly confidential. If fifty planes came in and required new fuel, we were
Jt. 74. supplying the Air Force and they would have to tell me about it.

XQ196. The Army and Navy were buying more products during that period than they had previously, were they not? A. Yes, the consumption was greater.

XQ197. They were buying specialized products for the Air Force, types of gasoline they had not bought before? A. Yes. But what I was trying to do—and I got somebody to come out from London—we were trying to persuade the Army to get their own gasoline plant. I was afraid the Army had all their eggs in one basket over there. I was working on that.

XQ198. Because of the fact you had the only blending plant? A. Yes. It was stuck right in with all the other products. You wanted a little dispersal, and from what was going on in Europe, I knew this was cockeyed.

XQ199. In addition to cables that you sent to the home office, did you make any written reports to them as
Jt. 75 to what was happening? A. As regards military activities?

XQ200. Yes. A. My orders were not to; to send as few words in the cables as possible; use my own judgment, boil it down. If I had to consult New York, do it, but I was put out there to go ahead on my own. If it worked out, fine, I would be compimented; and if it didn't I would be thrown out.

XQ201. After this meeting with General Drake, you had to try to make arrangements to get your tankers arriving more expeditiously to keep you closer to the agreed capacity, didn't you? A. Visible supply had to be changed. I couldn't do anything about having more. I didn't have much leeway about hurrying up the tanker schedule. For supply, I had to keep telling them what I wanted and when. I would be told when I would get it and I would have to take care of it from then on.

XQ202. This meeting you had after the outbreak of the war with representatives of the other oil companies you said was held on Friday of that week? A. Yes. It
Jt. 76 might have been Saturday, but for various reasons I am quite sure it was Friday. I know it couldn't have been Wednesday or Monday or Tuesday.

XQ203. I think you said that was the first meeting you had after the outbreak of the war with Army representatives and with representatives of the other oil companies? A. Yes.

XQ204. Had you had, during that period, meetings with representatives of the other oil companies without Army people being present, between December 8th to 12th? A. The war was on and I was caught, and several of us would be caught in an air raid shelter.

XQ205. Were there other oil company representatives in the same air raid shelter? A. That is what I am getting at. They weren't prepared, and we always figured to be near one of the good shelters and we happened to find ourselves near there. All of the oil company representatives belonged to the University Club and frequently, during the
Jt. 77 war, we used that air raid shelter.

XQ206. Had you had discussions with Army officers during that period, between December 8th and 12th, without other oil company representatives present? A. Yes. After the war started, I, personally, spent more time in Admiral Hart's Headquarters.

XQ207. Those were on procurement problems largely, or security? A. Procurement, security, shipping; I had a tanker in the bay when war broke out. We were supplying the speed boats.

XQ208. PT boats? A. Yes.

XQ209. Were you at Pandacan at any time after the war broke out? A. Yes.

XQ210. When? A. Quite a few times. The last time I went to Pandacan, I would say, would be the 27th of December.

XQ211. Had you been there between the outbreak of war and this meeting with General Drake? A. Yes.

Jt. 78 XQ212. Were there any Army guards out the then? A. Yes. I had been there to look, I went see what kind of layout they had in our installations.

XQ213. They placed them at the gates, I take it—or how many gates did you have at that time? A. We had it down to one. But they were inside the terminal and patrolling all around.

XQ214. They were at the tanks? A. They had regular areas to patrol.

XQ215. You said you went in to look and see? A. I went to see their quarters and I talked to the officer there.

XQ216. Where did they have their quarters? A. It was a warehouse just inside the main gate.

XQ217. One of your warehouses? A. Yes.

XQ218. This meeting on December 12th, I take it there were a considerable number of Army personnel there; you mentioned more than there were at the prior meetings? A. Yes. The Department Quartermaster and the

Jt. 79 Depot Quartermaster and all these quartermaster officers were concentrated, before the war, down near Port Area, and they were all bombed out by Wednesday. That is why I fixed the meeting by Friday. The fires had wiped out all the places down there. When I heard San Beda College—we all got caught in another heavy air raid. We had all these officers milling around and we went up to this room, and I can recall a whole group of officers at a long table. A whole group of tables were together. I don't know whether I came in after they had started or just at the beginning.

XQ219. Do you recall if a stenographic transcript had been made of that meeting? A. I don't know. It would have been very unusual. I would have asked what it was about. That is an unusual procedure in the Philippines, in

the Orient, when you talk to somebody, to have somebody take stenographic notes; Orientals would object to that.

XQ220. You said you had Mr. Larsen with you at
Jt. 80 this meeting? A. Yes. That is the meeting at San Beda.

XQ221. On the 12th? A. Yes.

XQ222. Was he the only one you had with you? A. My chauffeur, Larsen, and myself. There was utter confusion —bombing every day, fires all over, everybody jumping all over town. I was lucky to get him; I would have taken somebody else if I didn't find him.

XQ223. You said later General Darke turned the meeting over to Bersina. What was Bersina at that time, a colonel or major? A. I think he was a colonel. He had been a major and he had become a colonel. He got a jump in rank and became Depot Quartermaster.

XQ224. You said they wanted to use your up-country bulk plants? A. Yes.

XQ225. Those are the ones shown on Plaintiffs' Joint Exhibit 1 with circles; is that right? A. Yes.

XQ226. The one at Tarlac, and so on? A. Yes.
Jt. 81 In addition to Pandacan, they wanted to take these over.

XQ227. Did they say what they wanted to use them for? A. To supply the troops.

XQ228. Distributing points, or something of that type? A. Yes. The front was up here. (Indicating).

XQ229. You mean somewhere south of Poro? A. You mean now or then?

XQ230. What you thought then. You might take this pencil and draw a line where you thought the front was at that time. A. There were a couple of fronts. What I thought?

XQ231. Yes. A. Poro, and if this is Vigan—I figured there were three fronts.

XQ232. You have marked the two you are sure of with double lines? A. Yes. With a third up here, way north of Poro, up by Vigan.

XQ233. On the same coast, west coast? A. Yes,
Jt. 82 except it was farther north. I knew we were caught near Poro and there was something going on. Then I figured there were some Japs at Lingayen, fighting going on there, and I was sure there was fighting between the coast and the foothills, at Baguio.

XQ234. Colonel Bersina indicated they wanted to use these bulk stations as advance supply depots? A. That is right. They were going to take those over. All the conver-

sations before had been, "We are going to take Pandacan over", but they never talked in terms of running these places. At that meeting he said, "We are going to run those and take over service stations."

The Commissioner: We will recess until 2:00 p. m.

(A recess was taken, at 12:30 p. m., to 2:00 p. m.).

Jt. 83

AFTERNOON SESSION

2:00 p. m.

LUCIAN LORING ROCKE, resumed the stand and testified further, as follows:

Cross Examination (Continued)

By Mr. Barnes:

XQ235. Mr. Rocke, at this meeting that you described that General Drake called on or about December 12th, do you recall whether it was specifically stated at that meeting that—was it Major McConnell at that time or was he a colonel? A. That was then General Drake, and I think McConnell was a colonel then.

XQ236. Do you recall whether it was specifically stated that Colonel McConnell would take care of the contract end? A. That wouldn't be Drake. It is my recollection that Drake made an outline, introductory remarks, and then turned the meeting over to Colonel Bersina. And then, after Colonel Bersina had talked quite a long time and explained what the plans were, and so forth, and it involved quite

Jt. 84

a few new things, such as the up-country bulk plants, pump outlets up-country, service stations in the City of Manila, Colonel Bersina—I know we started to get into detail; the meeting ended up with the understanding that now that we all understood how it was to work, why, the different officers would get in touch with the different organizations to arrange that. I think he spoke about several officers there—"They will be around to see about this or that"—I think McConnell was included, but I am not positive.

XQ237. McConnell was present at that meeting, wasn't he? A. Yes, to my best recollection.

XQ238. Do you recall him saying anything? A. I don't recall any Army officers saying anything except General Drake and Colonel Bersina. The other Army officers—there was a group at the end of the table of at least half a

dozen, and I don't remember anybody talking except those two.

XQ239. Do you recall whether Colonel Harwood
Jt. 85 was there or not? A. I don't remember him being there at that meeting.

XQ240. The next discussion you had about this was five or six days later, when you went to see General Marshall; is that right? A. Discussion about what? You see, this was a group meeting. I had various discussions, of course, with Army and Navy—

XQ241. Let me ask you this: Did you receive any instructions from Colonel Bersina after this meeting; any specific instructions? A. Either that afternoon or the next day, why, we had these various officers coming down. They had picked out the service stations they wanted and we sent out members of our staff with them to arrange, because those were not operated by ourselves, so we had to send somebody with the army officers to tell the operator of the service station that we were turning the station over to the Army for Army operation, and negotiate the terms with them for compensation, because it wasn't our personnel.

XQ242. In other words, you yourselves made
Jt. 86 some arrangement for crediting the station operator with all gasoline he delivered to the Army? A. We didn't have anything to do with that. The Army did it. We simply helped. We sent one of our young fellows in the City, there were one or two of our young American staff who went with an Army officer or several Army officers to arrange this with the dealer. We had nothing to do with it, except help the Army make the deal.

XQ243. These were not company-owned stations? A. They are company-owned stations or company-leased stations, which were in turn leased back to an operator who paid the staff and got his compensation from us.

XQ244. So any arrangement that was made was made, really, between the Army and the operator of the station? A. Yes, with our assistance.

XQ245. You merely served to introduce the Army officer to the station operator and give any assistance to the negotiations that you could? A. That is right.

Jt. 87 XQ246. What about your bulk plants; did you have to send any instructions to them? A. Yes, we had to send a man to each one of the bulk plants. That was a different arrangement. That arrangement, the man

went with the Army and was to stay with the Army, he wasn't coming back to Manila until—we didn't know. He was assigned thereafter to assist the Army as an adviser.

XQ247. Did this refer to the bulk stations in Luzon, or throughout the Islands? A. In Manila—you mean this San Beda meeting?

XQ248. Yes. A. We were only talking about Luzon at that meeting.

XQ249. That included four bulk stations of yours on Luzon? A. Cabanatuan, Tarlac, San Pablo—I think only three of ours. San Pablo, in the south; Cabanatuan in the north; Tarlac in the north.

XQ250. Dagupan? A. Is that marked as one of ours?

XQ251. It is marked with a red circle on Plain-
Jt. 88 tiffs' Joint Exhibit 1. A. When this was shown to me I was asked whether this represented the bulk plant position, not a question of what the Army took over. We had one commonly known as the Dagupan plant, but it was Calasiao. Shell was at Dagupan. We were south, at Calasiao.

They didn't take that plant. I can recall them deciding they didn't want that particular one.

XQ252. So it was just the three, then, that came into issue there? A. That is right, only three they decided to take.

XQ253. You sent one of— A. Of ours.

XQ254. You sent one of your men to each of those locations? A. That is right.

XQ255. To cooperate with the Army? A. To stay right there and cooperate with the Army.

XQ256. What about Pandacan, did you receive any spe-
cific instructions with respect to Pandacan sub-
Jt. 89 sequent to this meeting? A. You mean any change?

XQ257. Yes. A. The only change that I recall that took place after this meeting was this meeting resulted in a complete shut-off for the time being of anything to anybody except the military forces.

XQ258. That was a matter— A. A matter of twenty-four hours, or something like that.

XQ259. That was subsequently relaxed somewhat? A. Yes.

XQ260. To permit the Fire Department to get some supplies? A. Yes. The Fire Department came over and we said, "We are sorry, you can't get anything."

XQ261. Who gave you that specific instruction, do you recall? A. Which?

XQ262. That nothing was to be delivered to anybody but the Army? A. That was either General Drake or Bersina, at that meeting.

Jt. 90 XQ263. I see. A. At the time of the meeting, with an air raid on and a lot of other things, it didn't dawn on me at that meeting until after the meeting was over, remembering what he said, that it meant nobody gets anything at Pandacan except the Army.

XQ264. You said that was relaxed about twenty-four hours later? A. That is right.

XQ265. Who did that? A. The relaxing?

XQ266. Yes. A. Do you mean by way of instructions?

XQ267. Yes, by way of instructions. A. That was done as a result of a meeting I had with General Marshall and General Drake and the Civilian Emergency Administrator, or Oil Administrator, I have forgotten what his title was.

XQ268. He was a Filipino? A. He was an American.

Jt. 91 XQ269. In charge of the Commonwealth Oil Distribution? A. Yes. He looked after oil and transportation and what was called the Civilian Emergency Administration—the CEA.

XQ270. Colonel Gilhouser? A. Yes, Colonel Gilhouser. After I got to thinking about the things that happened at that meeting then I notified Colonel Gilhouser, "I am sorry, nothing more to anybody except military forces. The military told us they had it and the Commonwealth was out." Then I went with Colonel Gilhouser to General Marshall's office the next morning.

XQ271. Whom did you see there, General Marshall? A. Yes. He called General Drake in.

XQ272. Was some change made then? A. The change was made that essential services—it was a rather complicated arrangement, as I recall it. The central services would have to be cleared through the Civilian Emergency Administrator and then it would come to me, and I would decide if it was bona fide and, if not, I would get in touch, I think with a Major Beebe, if there was any doubt.

Jt. 92 If it looked all right to me, I was to go ahead.

XQ273. Do you know if there was anything said at the time of your discussion with respect to transmitting that relaxation to the other oil companies? A. No, the other oil companies—I was only concerned with what it meant out at Pandacan.

XQ274. There were four oil companies at Pandacan, weren't there? A. If I could explain; Colonel Gilhouser is an old member of our staff who had retired. I was on a little different footing with him and I called him and he hustled over to our office, and we talked it over and we decided we would go down and see General Marshall to fix up an arrangement. The arrangement was mutually satisfactory and then I said all right, I would release it: Colonel Gilhouser I don't think was interested in what would happen to the other oil companies. He was only interested in his relationship with us. We had the contract to supply the Commonwealth Government.

Jt. 93

XQ275. It was just a matter of Standard being able to keep its commitments? A. The Army didn't want the civilians to get anything but they would relax where it was essential. The question came up with some of the politicians and that was one reason it was checked through me. There was not to be any politician supplied under the Central Services.

XQ276. Mr. Rocke, prior to this meeting on December 12th, what changes had been made since the outbreak of war of the operations at your Pandacan Terminal? A. I don't know if there had been any changes.

XQ277. Had there been any change in your method of operation at Pandacan between December 8th and December 12th? A. I can't recall any essential changes.

XQ278. You were still making deliveries as fast as you could to people who wanted it? A. I am sorry, there was a change; I recall a change. Up to that time we would have had to have a requisition number or a contract number for anything supplied to the military forces and right at the outbreak of war we were notified that that requirement on contract number was waived. Normally, we would have had to have bids and have a contract number. That was waived. That was one difference.

Jt. 94

XQ279. That was similar, then, to a negotiated bid instead of procurement by invitation, or something of that type? A. Yes. The service stations—for example, we were told to supply any military personnel, any military vehicle that came, let them sign and be sure the number of the military vehicle was on the receipt. Then the big change came as a result of that meeting.

XQ280. What change was that? A. Our Order Department, all that, stopped. We had nothing more to do, the

Manila office had nothing more to do with Pandacan at all, except to help. The orders all went in to Pandacan, the units and everything went right to Pandacan. Our Order Department closed down.

XQ281. In other words, let me see if I understand this: Prior to that time, the procedure had been for any unit of the armed forces who wanted petroleum would come to your Order Department? A. Prewar.

Jt. 95

XQ282. You would instruct Pandacan to make delivery after you were satisfied that the necessary requirements had been fulfilled? A. That is right.

XQ283. Starting December 8th, you modified that to the extent that you did not require a contract number or requisition number? A. We required an order, but they could then present the order at Pandacan, it would be called to the office for the purposes of record. Then, following that meeting on the 12th, we stopped all that record business in the office; because then, for all practical purposes, we were through with Pandacan except to do what the Army told us.

XQ284. You stopped keeping any records in the office? A. Anything to do with orders. The Accounting Department, they had their regular procedure. They kept gallonage figures and things like that, but without regard to invoicing.

Jt. 96

XQ285. But they still kept account of deliveries in your Accounting Department? A. They didn't keep any customer ledger cards. There was no invoicing done, no pricing done. But they kept stock records, the stock accounting was maintained.

XQ286. You said that about the 17th or 18th you went to MacArthur's Headquarters and saw General Marshall. Where were MacArthur's Headquarters at that time? A. No. 2 Victoria.

XQ287. In the Walled City? A. You went inside the Walled City; it was in a corner of the wall.

XQ288. At that time you were worried because of the absence of any written authority? A. Yes, to take over the property.

XQ289. You were asking him for the right? A. That is right. The Navy had given me something, I wanted the same thing from the Army. The Navy had given me something, a charter-party for the tanker. I wanted something similar for Pandacan and all our equipment.

Jt. 97

XQ290. The statement was repeated that Colonel McConnell was handling the matter? A. Yes, that he hadn't got around to it. Drake indicated that it was a surprise to him that it had not been completed, but he would get around to it.

XQ291. Did you hear from McConnell thereafter? A. No.

XQ292. Did you make any further attempt to get something in writing? A. From the 17th or 18th to the 25th?

XQ293. That is right. A. No, because I was expecting it momentarily.

XQ294. It was sometime shortly after the 25th that you were called to this meeting which Colonel Casey conducted; is that right? A. That is right—called by General Marshall. He turned us over to Colonel Casey. Officially, Manila had been declared an open city.

XQ295. What was Colonel Casey's position, do
Jt. 98 you know? A. I noticed an engineer insignia on. He was a new man to me, I had never had anything to do with him.

XQ296. Was he the only Army representative who was present at that meeting? A. What do you mean, "present"? It was in the Operations Room—

XQ297. Let me say participated in the meeting. A. General Marshall was in and out of the meeting. He would stand and listen. There was a lot of clatter; the anti-aircraft guns were right near there, besides the bombs, the ringing of the bell, the field telephone. Corregidor kept calling up. The meeting was a meeting in a sense that we were around a table and some of us would strain and then step back and somebody else would step in to try to find out what it was all about.

XQ298. You were standing? A. Sometimes standing and sometimes sitting at the edge of a table where the maps were.

XQ299. Who for the Army talked at the meet-
Jt. 99 ing other than Colonel Casey, anybody? A. Nobody except Casey. In other words, we were told by Marshall—I know, when I was turned over to Casey, it was words to the effect "From now on he will give you orders."

XQ300. Prior to that time, there had been a fire at the Standard-Vacuum plant at Pandacan, had there not? A. That was the morning of the 26th.

XQ301. That was either the day or two days before this

meeting, then; is that right? A. Yes. That was at least a day and probably a couple of days.

XQ302. What cause the fire, do you know? A. What caused the fire?

XQ303. Yes. A. I know the official explanation. The official explanation was that somebody lighted a cigarette and exploded the gasoline vapor.

XQ304. One or more of your tanks had been opened prior to that time to be drained? A. We were
Jt. 100 draining aviation—it was not aviation, it was an aviation blending agent, alkylate.

XQ305. That fire had spread somewhat into some of the other plants in Pandacan, hadn't it? A. I don't know about that.

XQ306. Did it cause an interruption in the electric service out there? A. The power was off, yes. They were filling by gravity.

XQ307. Not at your plant? A. What?

XQ308. Did you do gravity filling in your plant? A. No. As I recall, I think the Army switched over to some other terminal to fill tank trucks. In other words, our tank trucks were sent by the Army over to another terminal to fill.

XQ309. Do you recall if the question of that fire and the interruption of electric power were discussed at that meeting? A. Which meeting?

XQ310. With Colonel Casey. A. Not with me. I didn't even hear it mentioned.

XQ311. Do you recall any discussion at that
Jt. 101 meeting with respect to some lighters that were lying in the Pasig River, in the vicinity of these plants, that had not been filled? A. That had not been filled?

XQ312. That is right. A. I don't recall that.

XQ313. Do you recall any of the other representatives of the companies giving any kind of a general report as to the stocks of various types of petroleum products that were on hand? A. Reporting how much stock they had on hand?

XQ314. In general amounts, yes. A. As I think of it now, it is quite possible, it seems to me, that each one of us was asked to give our estimate of how much was left in the tanks; because his immediate concern was to hurry up and get the stuff out of Pandacan. I think he started by asking how much was there.

XQ315. Do you recall asking for his assistance in supplying transportation and labor to move that material?

A. No, we didn't need any. The Army already had
Jt. 102 their work pool over there. We didn't need any at our terminal, to my knowledge, we never had any difficulty getting sufficient labor. There was one or more other terminals that had difficulty.

XQ316. You referred to "Army work pool"; what was that? A. They had a pool, it was reported to me, a pool of laborers; as these different orders had to be filled over and above the normal work load, they had a pool on which they could draw.

XQ317. Who set that up? A. The Army. It was called an Army pool.

XQ318. Do you know who the officer was? A. I don't know.

XQ319. Was it Lieutenant Ramme? A. Lieutenant Ramme was an employee of the Standard-Vacuum Oil Company until a day after Christmas. He wasn't in the army.

XQ320. You think the pool was set up before he went into the army, the labor pool? A. I think that there was a labor pool out there, and there probably was one
Jt. 103 or more labor pools.

XQ321. Do you recall any discussion at that meeting of other locations in and around Manila where there might be stocks of petroleum products, other than at Pandacan? A. Yes, there was a conversation about lubricating oil stocks, because the Army had ordered us to distribute a certain amount of high grade lubricating oil around to other caches in case Pandacan was bombed. I remember Casey saying, "We have to backtrack and pick the stuff up again."

XQ322. That was stored, among other places, at the Johnson Pickett Rope Company? A. Yes.

XQ323. International Harvester? A. That is right.

XQ324. Cristobal Oil Mills? A. That is right.

XQ325. No. 9 Concepcion? A. I don't know that.

XQ326. Philippine Cotton Mills? A. Yes, that sounds right.

Jt. 104 XQ327. Do you remember any discussion about stocks that might be available at Marsman Trading? A. No, I don't recall that.

XQ328. Union Products? A. I don't recall that. In other words, I don't think he would have asked me about that.

XQ329. Do you recall whether there was any discussion at that meeting about the best method of destruction of the oil stocks? A. Not at that meeting.

XQ330. Do you recall a discussion as to the possibility of an inter-pumping, things like aviation gasoline, bunker oil, Diesel oil, and things like that? A. I can say positively there was no discussion about aviation gasoline concerning me.

XQ331. Do you recall that discussion at any other meeting? A. Aviation gasoline, I was taking my orders from the Air Force about that, not from the Quartermaster.

XQ332. Do you remember any discussion about
Jt. 105 inter-pumping of products at any meeting? A. No, I recall no such discussion.

XQ333. I think you stated, did you not, that Colonel Casey stated that the Army would handle the demolition, if it became necessary, because the oil companies expressed unwillingness to do that? A. That is right, there was a general unwillingness, and then—I wasn't in that particular part of the discussion. I heard part of it, but I was overhearing it, it wasn't directed at me.

XQ334. It was part of this same general discussion you have been describing, wasn't it? A. Yes, but as I tried to make clear, it wasn't a discussion in the sense like around a table here in a calm atmosphere. This was only two or three people at a time—if Casey was talking, only two or three could hear him. He would jump from one company to another. Probably the man on the other side could hear, but nobody else could hear.

XQ335. You had opened the valves on the alkylate tanks, on the Navy's instructions? A. Under the
Jt. 106 instructions of Admiral Rockwell, confirmed by the Air Force Headquarters.

XQ336. What is Stanbasol? A. It sound like a solvent.

XQ337. Was that one of your products? A. "Stan", it would have to be; yes. Is it "Standesol"?

XQ338. No, "Stanbasol". A. It would sound to me like a solvent. I am not familiar with the product.

Mr. Connelly: Could we have an identification of the document counsel is reading from?

Mr. Barnes: I am reading from a document which is headed "Extracts from notes on conferences and telephone conversations", and it is not signed. But it is with material which I received from General Casey and I assume it is part of his records.

The Witness: I don't know the product—"Stanbasol".

Mr. Connelly: May I ask that that document
Jt. 107 be marked for identification, if the Commissioner please?

The Commissioner: What is the basis of the request?

Mr. Barnes: I have no objection to doing it, your Honor.

Jt. 112

(Photostat of copy of extracts from notes on conference and telephone conversations marked Plaintiffs' Joint Exhibit 4 for identification, as of this date).

Mr. Barnes: So there will be no misunderstanding on this matter, in an earlier part of my examination I
Jt. 113 read from a photostat of a copy of a document headed: "Memo on Conference with Representatives of Four Oil Companies, at 11:00 a. m., 12/28/41." The original was allegedly signed by Hugh J. Casey, Colonel, Corps of Engineers.

Mr. Connelly: Could they be marked?

Mr. Barnes: It doesn't make any difference to me.

The Commissioner: So ordered.

(Photostat of copy of memo on conference with representatives of four oil companies at 11:00 a. m., 12/28/41, original signed by Col. Hugh J. Casey, CE, consisting of two pages, marked Plaintiffs' Joint Exhibit 5 for identification as of this date).

By Mr. Barnes:

XQ339. Was your office located in the Metropolitan Theatre Building? A. Yes, sir.

XQ340. Do you recall, at the time of this conversation with Colonel Casey, being given an undated letter
Jt. 114 signed by General Marshall? A. No.

XQ341. Let me show you this document and let me ask you if you ever saw the original of that? (Mr. Barnes hands document to witness). A. I don't recall ever having seen that before, the original or a copy of that letter.

Mr. Barnes: Will you mark that for identification, please?

The Witness: What is the date of that?

XQ342. It is undated. A. It is addressed to us, Standard-Vacuum Oil Company.

XQ343. Metropolitan Theatre Building, Manila, P. I. A. No date. I never saw that.

(Photostat of copy of letter signed by Gen. R. J. Marshall to Standard-Vacuum Oil Co., undated, marked Defendants' Joint Exhibit 1 for identification, as of this date).

XQ344. You said, at this conference with Colonel Casey, you had taken along one other person? A. I think
Jt. 115 I went to Mr. Larsen's air raid shelter and brought him along.

XQ345. I take it from your description that there was no representative of Tide Water there? A. I am not sure whether Mr. Hoffman told me to find out what it was all about, and let him know, or whether he said he was going to meet me there. When I got the request to come to that meeting, I know I discussed it with Mr. Hoffman, at the University Club.

XQ346. This letter of Colonel Casey's that you received, dated December 25th, when did you receive that? A. I would say about—having placed the meeting with Colonel Casey in the former headquarters of General MacArthur on the 28th, I would say the 29th or 30th. In other words, one or two days subsequent to the last meeting with the Army.

XQ347. How was it delivered to you; was it delivered by regular mail or by messenger, do you recall? A. My recollection, I recall definitely that it was a member of my staff who came in and gave it to me and said,
Jt. 116 "At last we have got something." It was one of two men. I am not sure whether it was Mr. Larsen or Mr. Garrard.

XQ348. You do not know how they received it, they just brought it in to you? A. That is right.

XQ349. Had it been opened? A. The letter, itself, it wasn't in a cover. The letter was handed to me and he said, "At last we have got something."

XQ350. You immediately had it photostated? A. Yes, because it was the first document I had gotten out of the Army since the war started.

XQ351. I think you said the last time you were out at Pandacan was the 27th? A. I don't think I was there after the 27th. I am sure I was there on the 27th, but I don't recall going out to Pandacan after the 27th.

XQ352. So that, in view of the time you fixed for this meeting, you would not have been there after the meeting? A. No, I am quite sure that I didn't go back after
Jt. 117 the meeting.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Connelly:

RDQ353. You have testified with reference to the meetings held between representatives of the Army and representatives of the several oil companies, two of which you placed, one in June or early July of 1941 and the other about December 12th, at San Beda College. You have also given in response both to my questions and to Mr. Barnes' questions your recollection of the persons who attended those meetings? A. Yes.

RDQ354. Were there persons present in addition to those, whose names you have not been able to recall? A. At all three?

RDQ355. Just those two. A. Which two?

RDQ356. The meeting in June or July of 1941, held at the offices of one of the oil companies, and the second one being the San Beda College meeting. A. Could there have been others present?

Jt. 118 RDQ357. Yes. A. Undoubtedly.

RDQ358. Did you know, of your own personal knowledge, the precise function of each of the persons present at those meetings from the Army side? A. In regard to certain ones of the Army officers, I thought I knew what their functions were.

RDQ359. In addition to the ones about whom you told us? A. That is right.

RDQ360. I take it your answer is you did not? A. That is right.

RDQ361. You were also asked on cross-examination whether following the meeting that you had with General Grunert, June or July of 1941, and following the other meetings that you had with representatives of the armed forces, you made any reports, written reports on the contents or subject matter of those meetings. I ask you whether in connection with those meetings and your daily operations you made any oral reports to persons associated with you in the Standard-Vacuum Company con-

Jt. 119 cerning the subject matter of those meetings? A. Yes. When I came back from a meeting it would usually be an oral report to the department heads or my assistants concerned, telling them where I had been and what transpired.

RDQ362. The assistants you mentioned are Mr. Larsen— A. Mr. Larsen, Mr. Ames, Mr. Garrard of the Operations Department, and my chief accountant.

Mr. Barnes: What was his name?
The Witness: George S. Brown.

By Mr. Connelly:

RDQ363. Did you ever know an Army employee named Mary Alice Clements? A. I never heard of the person.

Mr. Connelly: That is all.

Recross Examination

By Mr. Barnes:

RXQ364. Mr. Rocke, you said you were liberated February 7th, 1945? A. February 7th, 1945, I believe is the date.

RXQ365. How long did you remain in the Philip-
Jt. 120 pines; when did you return to this country? A. I think I sailed from Manila on April 19th.

RXQ366. You made one attempt to locate records of the company and decided there were none available—the one effort you described? A. What is the question?

RXQ367. Did you make any attempts other than the one you described to locate the records of the company? A. Yes. I went several places.

RXQ368. Where? A. I went to Pandacan, for one thing.

RXQ369. Did you find any records there? A. No.

RXQ370. Did you find any records anywhere? A. I know I dug up some payroll records.

RXQ371. Where did you find those? A. A Filipino had hidden them out, buried them. That is why, when you asked me if any came up, there were a few odd pieces of information. I went back out to live in Pasay and as these Filipinos
came in they gave me information, or if they had
Jt. 121 any company documents they brought them to me. But the only documents I can recall is part of the payroll.

RXQ372. What did you do with those records when you returned to this country, in April? A. Which?

RXQ373. The ones turned over to you by Filipinos and so forth, any odd records. A. There wasn't much of importance, as I recall it. If there was anything, they were turned over to Mr. Parrish.

RXQ374. On your return to this country, did you go to the head office of your company? A. Yes.

RXQ375. Where is that located? A. 26 Broadway.

RXQ376. New York City? A. New York City.

RXQ377. Did you there review any of the records that they might have relating to transactions in 1941, the transactions you have been referring to? A. Which transactions do you mean?

RXQ378. These various meetings you have been
Jt. 122 referring to. A. I didn't even talk about those.

RXQ379. Did you make any report to the company at that time, on your return in 1945, any written report? A. No.

RXQ380. When were you retired? A. As of October 1st.

RXQ381. 1945? A. Yes.

RXQ382. Where have you been living since then? A. St. Petersburg, Florida, or Plattsburg, New York.

RXQ383. Have you been in the company offices since that time? A. I have been twice.

RXQ384. When? A. February—the first week of February, 1946, and then again in November, on my way to Florida, the month before last.

RXQ385. 1948? A. November, 1948.

Jt. 123 RXQ386. When you went there in February, 1946, was it in connection with this claim? A. No. I just had come back from Boston and thought it was a good time to stop in and see how they were getting along.

RXQ387. When did the company or any representative of the company first approach you in connection with this claim? A. When I was there in February, 1946, I learned that there was a Claims Section that had been set up to handle claims in the various countries in the Orient.

RXQ388. You did not make any official report to them, or official statement to them? A. No, none at all.

RXQ389. When were you first approached for a statement in connection with this claim? A. I think the very first time was a letter received by me in the first week in November that had been addressed to me at St. Petersburg, Florida.

RXQ390. 1948? A. The month before last, yes.

Jt. 124 The company thought I was back in Florida for the winter.

RXQ391. Who signed that letter? A. Mr. Tracy.

RXQ392. He is the head of the Foreign Claims Department? A. Yes.

RXQ393. It was because of that you stopped in New York on your way back to Florida, because of the receipt of that letter? A. They asked me if I would come up from Florida, but I communicated with them and told them I

hadn't gone down yet, I had to go to Washington, but I would be willing to stop in New York for a short time.

RXQ394. How long did you spend there? A. From Monday to Friday. They wanted me to spend two weeks, but I told them I couldn't spend the time.

RXQ395. During that period, did you make any attempt to locate these cables that you had sent to the head office during the year 1941, let us say? A. Did I make any attempt?

RXQ396. Yes. A. I am out of the company,
Jt. 125 I can't give any orders around there. But I suggested that they find those cables, try to find those cables. People telephoned around the office looking for those cables.

RXQ397. Did you see them? A. They haven't found them yet. I want to see them.

RXQ398. Following that visit of yours to the company office in about the first week of November, you went down to Florida? A. Yes.

RXQ399. The first week of November was the week starting with Monday, November 1st; is that the week you were there or was it the week after that? A. I was there—I left Plattsburg the morning of the 3rd, the morning after the election; I met the night of the third in Connecticut, came down here to Washington on the 4th—that would be Thursday—and I stayed in Washington until Sunday and drove back to New York on Sunday.

RXQ400. So you were there the week from Monday the 8th through Friday the 12th? A. Yes.

Jt. 126 RXQ401. Have you been back in the office in New York since that time? A. I was there—I left St. Petersburg the 27th—is that a Monday?

RXQ402. Yes. A. I arrived in New York the night of the 27th of December.

RXQ403. You were in the office off and on from that time until you came down to this hearing? A. Yes, in and around New York and in and around the office.

RXQ404. Did you ask to see those records again, at that time? A. Which records?

RXQ405. The cablegrams. A. Yes, there are a couple of cables I asked about right up to the time I left. There is one in particular I want to see.

RXQ406. Which cable is that? A. That is the cable I sent about the 15th of December, in which, in
Jt. 127 guarded language, I told the company—

RXQ407. Do not say any more. I just wanted an identification for it.

XQ58. That was the last dynamite you had left? A. Yes.

XQ59. What about things like underground pipelines; did you put charges on them? A. There wasn't a necessity to. The lines were burning. When an oil terminal starts burning, you can be sure there will be nothing left after the tanks spill. If they are burning, they burn pipe-lines and everything else.

XQ60. How about fire walls? A. Fire walls around the tank would probably contain burning liquid. We in some cases opened the fire walls. I remember the Caltex property was one where we cut through the fire wall because the lower tank was too big for the dike, so to allow
Jt. 151 the burning liquid to come down from the upper tank to the lower tank, I cut the dikes in some instances.

XQ61. When did you cut them, was that while you were laying the demolition charges? A. In this particular instance, it must have been about the 29th or 30th, something like that. We kept altering the situation. If tanks emptied or got low, we might take charges off and put them on others. There was continuing changing.

XQ62. Was movement of gasoline in the terminal while you were there just a one-way operation, all going out? A. Yes. There was nothing coming in.

XQ63. What about materials in the warehouses; didn't you make an attempt at some point prior to the actual demolition to destroy some of them with machine-gun fire? A. Rifle fire. In one instance, we had the 803rd Engineer troops that were sent down with rifles to shoot into drums. It wasn't effective. It sounded like a battle going on and the whole area was becoming panic stricken.

Jt. 152 XQ64. Was that done on the 31st or sooner than that? A. No, that was probably around the 28th. I can't be sure of these dates. There were continual things going on.

XQ65. Wasn't there a danger of fire in connection with that operation? A. No, not with tracers removed.

XQ66. They took the tracers out? A. Yes. At that same time they took fire-axes and knocked in the drums. Beyond this military detail, there were some of the employees of the oil companies engaged in this, I don't recall how many, but there were quite a number of drums destroyed at that time. That was probably around the 28th, 29th or 30th.

XQ67. Which oil companies, do you recall? A. As I recall, wherever we could get any. I remember in the Caltex

plant, the rifle fire in that plant, the shooting was being carried out and I stopped that because of panic along the river front there.

Jt. 153 XQ68. At what companies were the plant personnel engaged in puncturing or attempting to puncture drums? A. As I recall, it was carried out in several areas. I particularly remember the Caltex area because I was over there at the time with the detail of soldiers when they were firing. What areas were involved, I can't recall at this time.

XQ69. What about things like walks and roads and piers and fences; did you make any attempt to dynamite or place charges around those? A. There were charges placed on tanks, warehouses, pumps, normally with the idea that the resulting flame would destroy any other property in that area. That is what happened—this is hearsay—the burning oil went into the river and nearly burned the bridge.

But it was a foregone conclusion, with all this oil draining on the ground around the dock area, there was no question about what was going to happen. It wasn't necessary to place charges in those places.

XQ70. What about the water-lines; what effect
Jt. 154 would there be on them? A. On the fire system?

XQ71. That is right. A. I remember one instance, on the fire pump, we placed a charge on the fire pump connected with the fire water-lines. A lot of heat or burning oil rolling over the ground, coming in contact with the pipe-line, the pipe-line wouldn't last very long.

XQ72. It would depend on how deeply it was buried? A. I can't recall, but I think a lot of the fire lines were above ground there, to the best of my recollection. I know a lot of the pipe-lines and oil product lines were above the ground.

XQ73. Which plant are you talking about, or are you talking about all of them, generally? A. All of them. It is a fairly large property and—

XQ74. What about service buildings, garages and things of that type that were not actually used for product storage, did you put any charges in them? A. There were
Jt. 155 charges placed in filling rooms and various places of utility. I can't recall exactly whether I put one in the garage in the Standard-Vacuum Company, but there were four lube oil tanks and they were charged.

In addition, we had some product called tetra ethyl lead, which is highly explosive. We took quite a few cylinders of

Mr. Connelly: I think the witness should be permitted to finish the answer. We want to make sure what the witness is talking about.

The Commissioner: Ma[illegible] I have the answer read in which he identifies the cable?

(Answer read).

The Commissioner: Was there more than one cable on December 15th?

The Witness: I don't know if it was the 15th. It is a certain cable I am looking for. I think it was about the 15th that I sent it. It may have been the 16th, 17th or 18th.

The Commissioner: Suppose you tell us what the cable pertained to without explaining the whole idea you were trying to get across. Identify it, instead of giving us the contents.

The Witness: The cable was telling the company not to ask us any more questions by cable or radio about
Jt. 128 the oil business, because I had no more authority, the Army had taken over.

By Mr. Barnes:

RXQ408. Whom did you ask to find these records for you? A. Mr. Collins, of our Legal Department.

RXQ409. Did you speak to anybody in charge of the file about it? A. The five days I was there in November?

RXQ410. Yes. A. I was up in an office in our Legal Department and I never had any chance even to see my old friends in the company, I had to come back this time to do it. So I didn't speak to anybody in the files or any other place.

Mr. Connelly: To avoid any mystery about cables or documents, I might say that a search has been made for those cables and other documents and correspondence, and upto the present time it appears that all of the cables, records and correspondence, during the period of time in question, have been destroyed in regular course of busi-
ness. We are still hopeful that somewhere along
Jt. 129 the line one or more copies may turn up in a file that escaped the normal routine.

Mr. Barnes: I do not want to appear to be doubting Mr. Connelly's word, but there is a statement, frequently made in the preceding hearings in the Caltex case, that statement of counsel is not evidence.

If you want to prove the loss or disappearance, it will

have to be a matter of proof. I just want to call your attention to that.

That is all I have.

By the Commissioner:

Q411. This letter of December 25th, 1941, signed by Colonel Casey, is that the only thing in writing you received in connection with the taking of the property? A. That was the only thing in writing, everything else was verbal.

Q412. Was your meeting with Colonel Casey in which there was discussion about the destruction of the property before or after this letter was written? A. The meeting was before, because that letter came just a day or so before the Japanese came into Manila.

Jt. 130

Q413. How long before this letter dated December 25th, how long before December 25th was this meeting at which you discussed the destruction of the properties? A. The meeting was after the 25th. Christmas Day, December 25th, was the day MacArthur proclaimed Manila an open city and the military would withdraw as soon as possible.

Aside from our dealings with the military, we all knew, reading the proclamation, that the end was in sight. Three days later I got this call over to MacArthur's Headquarters, but General MacArthur was in Corregidor. He went over Christmas Day.

That was when Marshall took me over to introduce me to Casey and it is my recollection he said, "Here is your new boss." The Army was pulling out. The Navy had been gone for three or four days.

Q414. This letter states: "Any action deemed necessary for the destruction of this property will be handled by the U. S. Army."

Jt. 131

I understood you to testify this morning and again this afternoon that at that meeting it was proposed that you, the representatives of the oil companies, might be called upon to destroy the properties and you objected; is that correct? A. We objected in general and several individuals objected strenuously.

Q415. If the meeting was held after this letter was written, had Colonel Casey changed his mind? He says here— A. I am afraid I haven't made myself clear. Let us forget the date of that December 25th letter. I didn't get that letter until the 29th or 30th of December; the meeting was on the 28th. That date is absolutely meaning-

less to me except in connection with some destruction that I had already done under the direction of the Navy.

Q416. You received the letter after the meeting? A. Several days after.

Q417. You do not know whether it was written on December 25th or not? A. No. It was a surprise
Jt. 132 when the letter was handed to me.

The Commissioner: Any questions, Mr. Connelly?

Mr. Connelly: No questions.

Mr. Barnes: I might make a comment on that: I think the Government's testimony will show whether the letter was antedated.

By Mr. Barnes:

RXQ418. Mr. Rocke, you just made the statement that this letter was the only writing that the company received during the period subsequent to the outbreak of war? A. That is the only one I recall.

RXQ419. Let me show you this document, which purports to be an affidavit executed by Mr. Ames; it is a photostat. Are you familiar with his signature? (Mr. Barnes hands photostat to witness). A. That is his signature.

RXQ420. Let me call your attention particularly to the fifth paragraph of that, starting with the words "That a number of written instructions". A. I notice
Jt. 133 that.

RXQ421. Do you recall the written instructions to which he refers there? A. I certainly don't.

RXQ422. What did you say his position was? A. Head of the Lubricating Oil Department.

RXQ423. In effect, one of the two assistants to the general manager in your organizational set-up? A. In so far as lubricating oil is concerned. On a thing like that, he didn't know what he was talking about.

Mr. Barnes: I would like to have this marked for identification.

The Commissioner: So ordered.

(Photostatic copy of affidavit signed by Aubrey P. Ames marked Defendants' Joint Exhibit 2 for identification, as of this date).

Mr. Barnes: Will you agree with me that that is a photo-

stat of one of the affidavits submitted to the Army in support of the claim?

Mr. Connelly: May we have that checked? There seems to be some question.

Jt. 134 Mr. Barnes: Yes.

The Commissioner: Is there anything else with this witness?

Mr. Connelly: Nothing else.

The Commissioner: You may step down.

(Witness excused).

The Commissioner: We will take a short recess.

(A short recess was taken).

Mr. Connelly: With reference to Defendants' Joint Exhibit 2 for identification, we concede that it is a correct photostatic copy of an affidavit filed in connection with the applications made to the War Claims Service, and also consent that it may be received in evidence.

For the record, the affidavit is sworn to July 23rd, 1946.

Mr. Barnes: I offer Defendants' Joint Exhibit 2 for identification in evidence.

The Commissioner: So ordered.

(Copy of affidavit previously marked for identification received in evidence and marked Defendants'
Jt. 135 Joint Exhibit 2, as of this date).

WILLIAM C. RA[illegible]E, a witness produced on behalf of the plaintiffs, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Connelly:

Q1. Where do you reside? A. At present in Stamford, Connecticut, and in Saigon, French Indo-China the last three years.

Q2. What is your present occupation and employment? A. Engineer, Standard-Vacuum Oil Company.

Q3. Prior to 1941, had you then been associated with the Standard-Vacuum Oil Company? A. I joined the Standard-Vacuum Oil Company in 1938. I came to the Far East, came to Hong Kong, stayed a month and a half; fourteen

months in Singapore, following which I proceeded
Jt. 136 into French Indo-China. I stayed in Indo-China until July, 1941, at which time I came to Manila, in the Philippines.

Q4. You remained in Manila with Standard-Vacuum Oil Company until what date? A. Until December 25th, and on December 26th, resignation took place.

Q5. 1941? A. Yes.

Q6. In what line of work were you engaged from July to December, 1941? A. Engineering work, research work.

Q7. Had you prior to your first employment by Standard-Vacuum Oil Company done engineering work? A. That is correct.

Q8. Did there come a time in 1941 when you enlisted in the United States Army? A. That was on December 25th, 1941.

Q9. What rank did you have at that time? A. First lieutenant, Corps of Engineers, United States Army.

Q10. Who was your commanding officer? A.
Jt. 137 Colonel H. H. Casey, USAFFE Engineer.

Q11. C-a-s-e-y? A. Yes.

Q12. What were your orders? A. Proceed to Pandacan Terminal, expedite the delivery of stocks to all the armed services; second, prepare the terminals for demolition work, undetermined date.

Q13. Who was in command of the Pandacan installation at that time? That is to say, from and after the orders you referred to.

Mr. Barnes: I object to the question as assuming a state of facts that has not been shown to exist—that anybody was in command of installations, if we are using the term in a military sense.

The Commissioner: Isn't that the issue here?

Q14. Was anything said in your discussion with Colonel Casey as to whether anyone was to be in command at Pandacan and, if so, who? A. My orders were that I was to proceed to Pandacan and I placed in command
Jt. 138 in Pandacan. Any orders coming into Pandacan were to pass through me.

Q15. What did you do, following receipt of that assignment? A. Processed, securing demolition crew, mechanics, handing in my resignation to the Standard-Vacuum.

Q16. This was all in Manila? A. This all took place in Manila, USAFFE Headquarters.

Q17. Proceed. A. Following that, I proceeded to Pandacan and called a meeting of the representatives of all four oil companies; in other words, to acquaint the people at Pandacan with the fact that I was in charge, representing the United States Army, Corps of Engineers.

Q18. What happened then? A. Following this meeting —at the same meeting, I should add, I stressed the urgency to all the various oil company personnel that it was absolutely necessary that we expedite the shipment of product and, also, I was laying a demolition network throughout the terminals and precautions had to be taken.

I also advised them that there would be no
Jt. 139 change in the present system of distributing to the Army, in other words, it was evidently satisfactory, and I could depend on the trained oil company personnel to carry on.

In addition to that, the labor element was very difficult at times; we already had a labor pool set up and subsequent to that date we were able to secure additional personnel in the labor pool. This work was carried on until December 31st, at which time I had a telephone order from—

Q19. I will come to that in just a moment. Have you placed the time when you went to Pandacan? A. I think it must have been about the morning of the 27th, to the best of my recollection.

Q20. During the period from the 27th to the 31st, you have told us what went on with reference to the removal of stocks, petroleum products, and the supply to the Army. What, if anything, was done with reference to records of deliveries to the Army at that point? A. There were no records—the only records kept were records of a descriptive nature. In other words, we had large-scale
Jt. 140 deliveries being made and which required a clear description for the people in the field receiving shipments. That was simply a descriptive listing. It was not in the nature of an invoice or billing.

Q21. What, if anything, did you do with that portion of the assignment dealing with the laying of the demolition network? A. I had a special detail. We placed dynamite charges and wired everything, ready for complete demolition.

Q22. Was that true throughout the entire installations of all four companies at Pandacan? A. That covered the entire Pandacan area. They were all connected with one switch.

Q23. What happened on December 31st? A. I was advised—I had telephone orders from Colonel Casey advising that demolition work would be carried out between five and six on the afternoon of December 31st. I was given discretion during that period when to blow.

Q24. What did you do following the receipt of
Jt. 141 those orders? A. From my position, when throwing the switch, it looked like the demolition was completely successful. I was not able to return to the terminal, naturally. I returned to USAFFE Headquarters, reported demolition successful, and secured my future orders.

The Commissioner: What date was the demolition carried out?

The Witness: December 31st, at 5:40 in the afternoon.

By Mr. Connelly:

Q25. I am not sure whether you fully answered my question as to what took place between the time when you received the orders on the 31st and the time that you executed those orders late in the afternoon of the 31st. Did you make any preliminary preparations? A. On the 31st, after receiving my orders from Colonel Casey, I notified the personnel of various oil companies to come to the Standard-Vacuum Oil Company, where I was established, and advised
them that this demolition work would be carried
Jt. 142 out and to clear their personnel—all personnel must be cleared by three o'clock that afternoon, I think. We kept unloading them during the day of the 31st.

Q26. Were you continuously at Pandacan from the 27th, the date you place your arrival there, until the 31st, when the demolition took place? A. No, I was not. I was there at all times possible, but I was called away; I had another assignment in another area, oil work, also, which necessitated my leaving Pandacan only during that time. The rest of the time I was there night and day.

Mr. Connelly: You may examine.

Cross Examination

By Mr. Barnes:

XQ27. Mr. Ramme, do you hold a degree in engineering? A. Yes, M. E.

XQ28. Where? A. University of Pennsylvania.

XQ29. When did you get it? A. 1931.

XQ30. What did you do between 1931 and 1938?

Jt. 143 A. I held a position with the Gulf Engineering Company, in New Orleans, marine engineering; I was, as an engineer, with the Nestle Chocolate Company from 1935 to 1938.

XQ31. Doing what kind of work? A. Engineering work.

XQ32. What kind, construction? A. Construction—there was, of course, machine work, machine design work, many different phases of that.

XQ33. You stated that sometime after you went to Pandacan, which I think you placed on December 26th, 1941—didn't you? A. I think it was probably the morning of the 27th.

XQ34. 27th? A. As near as I can recall.

XQ35. You say you called a meeting of the oil company representatives? A. Yes.

XQ36. Who attended, do you recall? A. To the best of my recollection, there was Mr. Brockway, Tide

Jt. 144 Water; I think Mr. Perrine, of Caltex; Mr. Barclay, of Standard-Vacuum Oil Company and I think Mr. Reed, of the Shell, was there.

XQ37. R-e-e-d? A. R-e-e-d; I am not positive.

XQ38. Do you recall what time of day that meeting was held? A. I can't be sure. As I recall, it was in the morning.

XQ39. How long did it continue? A. To the best of my recollection, it was very short. In other words, simply notifying the people who I was, what the duties were, and a very simple explanation. They were very busy, and they went back to work.

XQ40. You referred to this labor pool; was that something that was already in existence when you got there? A. There was a labor organization set up at the terminals. As I recall, when I came to Pandacan, this work was being primarily controlled by a clerk in the Standard-Vacuum office, an old employee who was well acquainted

Jt. 145 with labor, and he was handling the actual routing of personnel. In other words, men would be assigned from this pool to wherever they were required. Subsequent to that—

XQ41. Was that something, then, that was under the control of the companies up to that time? A. No, that was not my impression.

XQ42. Who was doing this assignment; wasn't it a Standard-Vacuum employee, didn't you say? A. He was

acquainted with the labor personnel more than any military man would be acquainted with these personnel.

XQ43. Were there any military personnel at the terminal properties when you arrived there? A. There were guards only. As far as I know, there were only guards at the terminal properties.

XQ44. You did not relieve them at all? A. I did not.

XQ45. Did you have any staff, military staff working with you, or were you alone? A. At the terminal, I had the demolition men with me (they were later commissioned into the service), also, Lieutenant McIntosh of the United States Army. Those were the only men who were stationed at the terminal.

Jt. 146

XQ46. Such staff as you had, then, were people who were involved in the portion of your orders relating to the preparation of the terminal for its eventual demolition? A. In addition, there was Captain Brewster Gallup, of the Department of Engineers, who had been active—I don't know just exactly what his duties had been prior to this time. But Captain Gallup came in several times to the terminal, he recognized I was in charge. Prior to that I don't know what his duties were. After I came in I was in complete charge and I didn't have a chance to investigate what happened prior to that time—I wasn't interested.

XQ47. You said you made a descriptive listing. I take it you mean by that you listed both the type of material and the quantity that was involved in the truckload or tank car? A. That is correct.

Jt. 147

XQ48. When you say it was not like an invoice, you did not attempt to price or show any price projection? A. It was simply description work. One of the embarrassing things was that various of the companies had different trade names. Attempting to avoid that, in many cases we took their own listing, trade name and quantity and box-car "So-and-so", and ship it out; and that was all. That was kept in duplicate.

XQ49. What happened to the copies of those? A. One set was left at Pandacan Terminal, the second set I carried with me. I don't recall where it was; I gave them to Major Gay. He was executive officer under Colonel Casey. I passed on that set to him.

I remember several remarks made at that time; they were going to try to forward them to the Quartermaster Corps forward areas, where they would try to locate these box-cars later.

XQ50. Did you do that currently, as you went along? A. That was done each day. As the box-cars were
Jt. 148 loaded, at the end of the day this listing was consolidated and retained. It wasn't sent concurrently to the field. There was nothing shipped with the box-cars in this particular instance.

XQ51. When did the demolition crew start laying charges, and so forth? A. As I recall, it must have been on the 27th. Just as soon as we got there we started running in some of the main lines. Following this—I wasn't well enough acquainted with all of the properties and what was in the various warehouses and what was in the various tanks—I assigned one of the men to get plans of all the installations and they were consolidated. On those, the amount of stock in each tank, the number of drums in the storage area were listed.

Taking that plan, I laid out the amount of charges which would be placed for each tank or in each warehouse. I think probably the final wiring of the terminal was completed about the 29th, about that date.

XQ52. Were you checking on the progress of
Jt. 149 that work currently? A. As much as I was able to. In other words, I would judge approximately how much dynamite to put on—not that I was a demolition expert. But, nevertheless, we had a lot of dynamite so we put on plenty.

XQ53. In general, where were those charges placed? A. Usually on each quadrant. We divided the tank into four sections. On large tanks we put four cases of dynamite to a quadrant. On small tanks we put two cases of dynamite on each quadrant and on the valve wheel we put four cases. If it was a volatile product you didn't have to put much.

XQ54. If you broke the tank? A. Yes.

XQ55. I assume, when you are referring to that—what would you consider a small tank that you might use two cases on a quadrant? A. There are numerous small filling tanks, ten-foot diameter, thirty feet long.

XQ56. Would you consider that a small tank? A. Yes.

Jt. 150 XQ57. Roughly, then you would put eight cases of dynamite on a tank of that size? A. It would depend a lot—if it was an overhead tank, the supports weren't too strong, easily damaged, just string two or three cases along. We weren't too worried, we had plenty of dynamite. On one tank at the end we put a whole truckload.

that and placed them in the middle of the Standard-Vacuum property. I don't know what happened to that; it added to the confusion. Garages, I can't place.

XQ75. Where was the switch for the charges? A. Roughly, 250 to 300 yards away from the nearest plant, which was down towards the Shell and Caltex plants, over on the other side of the railroad tracks, in the open field there.

XQ76. Did you fire it yourself or did somebody else? A. I had the crew with me and the switch was thrown—actually, the switch wasn't thrown by myself; I was down over the man and getting him ready to throw the switch. I
Jt. 156 believe that man was Furnstrom. I gave him a signal, like this, (indicating), to let go.

XQ77. Did you leave immediately? A. No, we stayed around a few minutes to observe the fire, but there were some Jap planes overhead for a time and we were watching until they were clear, and then immediately left the area.

XQ78. Where did you go? A. Returned to the city area; we wanted to get a further vantage point to watch the fire. It was at the University Club, up on an elevation, and we saw the whole thing was blazing. We reported to the USAFFE Headquarters and reported "Complete demolition."

XQ79. Where, in relation to the layout of the four plants, was this place from which you did your firing? We do not have a map here, but Mr. Rocke described them, going up-river, as being Shell, Tide Water, Caltex and Standard. A. From the Shell side, across the field and below, that estimate of 250 or 300 yards.

Jt. 157 XQ80. You were farther down-river from the Shell plant. You were farthest from the Standard-Vacuum plant and the Shell plant was the closest one to you; would that be right? A. That is correct. We were in a sort of half-moon, the terminals make a curve there, following the railroad spur; we were in a half-moon section.

XQ81. You were across the railroad tracks? A. That is right.

XQ82. Most of the properties of the companies were on the other side of the railroad tracks, weren't they? A. Yes, although the railroad tracks split; but as I recall, they were alongside of Shell and Caltex, to the best of my recollection.

XQ83. Didn't Tide Water have some tanks on the other side of the tracks? A. Yes.

XQ84. Did you see those from where you were when you

fired? A. From my position, all I could see was
Jt. 158 just the explosion. It was impossible to see anything beyond the smoke and the flame. I was unable to identify anything within the properties.

XQ85. What about buildings, like superintendents' houses and things of that type, did you make any attempt to charge them or were you relying on the fire? A. Relying on the fire.

XQ86. Would something like the railroad track—I assume it was laid on a cinder-rock base, was it not, do you recall? A. I don't recall what the ballast was.

XQ87. Would it act as a fire-break at all? A. No. In most cases the track was level with the ground. It wasn't built up at an elevation. It was ground level, permitting the passing of motor equipment and traffic.

XQ88. Do you recall approximately what the total quantity was that you estimated to be in the tanks at the time you fired the charges? A. I could not tell you how much
Jt. 159 was in those tanks. My basic interest was to determine how to carry out the demolition. We shipped—there were some tank transfers during that time, but I can't tell you how much was left in bulk storage.

XQ89. You had been there for about five days, moving product out as fast as you could? A. That is correct. As much time as I could be there.

XQ90. Were you placed in a prison camp by the Japanese? A. Yes.

XQ91. During what period of time? A. I think it was May 6th, 1942, until approximately February 7th, 1945.

XQ92. Were you in Bataan or Corregidor? A. Both.

XQ93. Where did you surrender? A. Corregidor.

XQ94. Were you still in the Philippines when you were released? A. That is correct.

XQ95. Did you make any survey of the Panda-
Jt. 160 can property at all? A. We were up in the north of the Philippines. We were under orders not to go to Manila.

XQ96. Have you ever been back to Manila since? A. Yes. I was back in 1947 and also 1948.

XQ97. That was just in transit to China? A. No, in 1947 I was taking my local leave. I was there, roughly, six days.

XQ98. In 1948 it was in connection with this claim? A. In 1948 it was in connection with this claim.

XQ99. Do you know whether Major Gay is still living? A. To the best of my knowledge he is dead. He was killed on one of the ships going to Japan, in early 1945.

Mr. Barnes: That is all.

Redirect Examination

By Mr. Connelly:

RDQ100. You referred on cross-examination to the fact that during the period of time when you were at
Jt. 161 Pandacan, from December 27th to December 31st, that records were kept of shipments out of Pandacan, and you stated that those records indicated the type and quantity of products in the box-cars that were being shipped? A. That is correct.

RDQ101. Did those records submitted to the Quartermasters Corps also include a notation of the place to which the box-cars were shipped? A. I might break this down a little further. At that same time that I was sent to Pandacan, I was told by Colonel Casey to expedite shipments. In other words, there would be shipments for which there were definite orders placed by the military—in other words, the Water Transport or one of the supply branches would request certain materials be sent to them.

In addition, I was supposed to ship out everything possible, and I would say that 75 or 80 per cent of the product shipped was at my discretion. No one else told me what to ship. Due to the fact I was not able to contact the
Jt. 162 Army Air Corps, there was one officer who was supposed to tell me what they would require. It made it difficult and, therefore, I took each box-car in turn and made a service kit out of it. I put some of each grade of lubricating oil; and in case that train was hit, if there was one car left it would be a complete service supply. If they received a line of box-cars, they would immediately know what they had in that group.

RDQ102. Were they also informed of the place or places where the box-cars were shipped? A. No.

RDQ103. Were those box-cars sent out to different destinations? A. The major portion of the deliveries were consigned, I believe, by Captain Brewster Gallup, who was in command of the Manila Railway.

RDQ104. You also answered in connection with the work of puncturing certain of the tanks at the installations and other demolition work that oil company personnel were

doing some of that work; was that done at your
Jt. 163 orders? A. That was done at my orders.

Mr. Connelly: That is all.

Recross Examination

By Mr. Barnes:

RXQ105. Do you recall when the Manila Railroad stopped running? A. Yes, I can probably answer that. The plan was that the locomotives in the Pandacan area would be placed inside of the oil company properties. At that same time that the oil company properties were exploded, the locomotives would be destroyed. There were locomotives in the area of Pandacan on, I believe, the morning of the 31st, and we were going to put them inside. The orders were changed and I believe those were blown—the fire-boxes were blown, down the line. What locomotives they still had in that area were blown by a demolition party, by two of the men who were taken from my party, and if I am not mistaken that was probably on the 30th or 31st.

RXQ106. Had you been moving loaded box-cars out on the 31st, for example? A. That is correct. We
Jt. 164 still had locomotives in our area. Of course, most of the locomotives—a lot of the locomotives were, I would say, up around San Fernando, Pampanga—had already gone out with freight cars. I know the rest of the equipment was destroyed by this demolition party.

Mr. Barnes: That is all.

(Witness excused).

Stephen Crawfurd, a witness produced on behalf of the plaintiffs, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Connelly:

Q1. Where do you reside? A. Manila, Philippines.

Q2. What is your present occupation and employment? A. General Manager of the Shell Company of P. I., Limited.

Jt. 165 Q3. The Shell Company of the Philippines, Limited; is that the company which formerly was known as Asiatic Petroleum Company? A. That is so.

Q4. For how long a period of time have you been employed by Shell of the Philippines and its predecessor? A. I joined in London, in October, 1919, went out to the Philippines in 1921. I was there on and off until 1939, when I went to Hong Kong for fifteen months, returned to Manila in October, 1940, and took over as manager of the Asiatic Petroleum sometime in May, 1941.

I continued in that capacity until we were locked up for war, and I came back in 1945, December, arriving in Manila in January, 1946, to be general manager under the new name, Shell Company, P. I., Limited, which position I now hold.

Q5. That is to say you spent the period of time from 1942 to 1945 in a Japanese prison camp? A. That
Jt. 166 is right.

Q6. Who was the man whom you replaced as general manager in the Philippines in May of 1941? A. Mr. Henry Cecil Whittall.

Q7. Were you in Manila continuously from May, 1941, until the outbreak of war in December, 1941? A. Apart from any possible short absences for short trips, yes. I must correct that. The question was, was I continuously there from May until war broke out. I was actually having my local leave in Baguio. I was there when war broke out and came straight back to Manila.

Q8. Can you place the approximate date when you returned to Manila after the outbreak of war? A. About four o'clock in the afternoon of December 8th.

Q9. Following that date, Mr. Crawfurd, did you within the next few days attend a meeting of representatives of the United States Army and representatives of
Jt. 167 the several oil companies at Manila concerning the oil company properties? A. I did.

Q10. Can you place the time and place of that meeting? A. It was sometime in the forenoon, I believe, on December 12th.

Q11. Where was the meeting held? A. San Beda College.

Q12. Do you recall who was present at that meeting, representing the Army? A. My own recollection is General Drake and Colonel Bersina and certain other officers, whose names I didn't know at the time, Mr. Coleman, a

former oil company executive who had joined the Army as a civilian adviser, and representatives of the four oil companies. For Asiatic Petroleum Company, myself, Mr. S. L. Lloyd, possibly Mr. Wooding, but I am not quite sure; for Standard-Vacuum, Mr. Rocke, I can remember quite clearly; Mr. Roeshoim I can remember very clearly, for Caltex; and Mr. Hoffman, for Tide Water Asso-
Jt. 168 ciated.

Q13. Were the officers, in addition to the ones whose names you recall—that is to say, Drake and Bersina—also from the Quartermaster Corps? A. I wouldn't know that. I didn't know who they were.

Q14. Will you state, as you recall it, the substance of what was said at that meeting by the Army representatives and by yourselves? A. In substance, it was that good work had been done by the oil companies in their capacity of supplying the Army, but we had been serving too many masters and henceforth Colonel Bersina was in charge of the entire oil company set-up at Pandacan; we would work for him.

He also stated that he would have to take over completely certain up-country bulk depots and that certain service stations would have to be turned exclusively over for use to the armed forces—service stations in the City
Jt. 169 of Manila, that is.

Q15. Then did Colonel Bersina have anything to say? A. That was all Colonel Bersina, he was saying that.

Q16. Was anything said about the oil company personnel and their functions from then on? A. They were to remain working in the positions where they normally did work and take orders from the Quartermaster Department.

Q17. Following Christmas Day, 1941, did you attend a meeting within a day or two thereafter, attended by representatives of the Army and representatives of the several oil companies? A. I did.

Q18. Can you fix the date and place of that meeting? A. It was in the forenoon. I would have put it on the 27th of December, though I gather from other testimony it took place on the 28th. But I would have put it on the 27th, myself, which I think was a Saturday. I had an impression it was on a Saturday; it might have been on
Jt. 170 a Sunday, though.

Mr. Connelly: December 27th was a Saturday, we can agree on that fact?

Mr. Barnes: Are we talking about the Philippines or here?

The Witness: The day and date would be the same anywhere.

By Mr. Connelly:

Q19. It is your recollection it was Saturday, December 27th? A. Yes.

Q20. Where did that meeting take place? A. It began upstairs in an office on the City Wall, and it was adjourned because of an air raid to Command Post in the thickness of the wall.

Q21. Who was there from the Army? A. Colonel Casey was there, and other officers were in the post, also. Mr. Rocke was there for Standard-Vacuum and another member of his staff, whom I had thought was Mr. Garrard. I gather, however, it was Mr. Ames, but that would fit in perfectly well. He was a big man. Mr. Roesholm
Jt. 171 I remember very clearly; and I cannot recall having anybody with me for Asiatic.

Q22. Will you state the substance of what was said at that meeting? A. The substance was that Colonel Casey is now in command of us, the reason being that the Quartermaster Corps had been ordered out of the City of Manila in line with General MacArthur's proclamation that the city was now to be considered an open city and he was getting his forces out as rapidly as he could.

Colonel Casey exhorted us to even greater efforts to get products out of Pandacan. We assured him we would do what we could, but we were already doing about as much as we thought possible.

Then came up the matter of possible destruction of any stocks which could not be got out. No date was set for it, but at first I got the impression we were being asked to do the destroying ourselves and, in common with the other representatives of the oil companies, my recollec-
Jt. 172 tion is that I strenuously object to that, as I considered that it was not a function which should properly be assigned to civilian personnel, for if the thing ever did get as bad as that, who would be left behind to explain why? As a result of that, Colonel Casey agreed the destruction should be done by military personnel or at least under absolutely direct order of military personnel.

Q23. I show you Plaintiffs' Joint Exhibit 3, photostatic copy of letter dated December 25, 1941, from Colonel Casey

to the oil companies, and ask you whether you received a duplicate original of that letter? A. Yes, I received a duplicate—I presume a duplicate original—of this letter.

Q24. Do you know where, physically, the duplicate that you received is at the present time? A. Certainly not where it is at the present time, no.

Q25. What did you do with it after you received it? A. My recollection is that I received it at my apart-
Jt. 173 ment, not at my office. I left it on the dressing-table in my bedroom and when I was arrested on the street, a few days later, I never saw it again.

Q26. Can you place the date upon which that letter was received by you with reference to the meeting at Staff Headquarters to which you just testified? A. It was after the meeting.

Q27. Were you at Pandacan on December 31st, 1941? A. I can't recall whether I was actually in the installation, but in the evening, at the time the plant was blown, I was on the top of a house on rising ground, just across the river.

Q28. A place from which you could see the Pandacan area? A. I could see the entire oil companies' property.

Q29. What happened at that time? A. The charges were set off at 5:45, I would have said; they went off in succession, a considerable interval between first and the last, there was a tremendous fire, a good deal of
Jt. 174 noise. It was a very fine sight.

Q30. After that occasion, Mr. Crawfurd, did you return to Pandacan or to a place from which you could see the Pandacan installation on the following day? A. Yes, I walked right through all the oil company properties the following day, January 1st, about 9:00 a. m., I should say.

Q31. What did you observe at that time? A. Apart from one large and possibly a couple of other smaller tanks which were undamaged, in the middle of the properties, a very successful job seemed to have been done. Practically every tank was in a state of collapse; completely burned out. The fire was burned down, there being no further fuel there to burn. The Filipinos were helping themselves to corrugated iron and other building material that was left, their own houses having been completely burned down or in ruins.

Q32. Was there fire and smoke? A. A lot of smoke and haze, but very little actual fire, certainly no danger
Jt. 175 from fire.

Mr. Connelly: You may examine.

Cross Examination

By Mr. Barnes:

XQ33. Mr. Crawfurd, you referred to the fact that at the time of these explosions you were at the top of a house on rising ground, across the river, I think you said? A. That is right.

XQ34. What do you mean by "rising ground"? I thought that Manila was fairly flat. A. I imagine that hill would probably be a hundred feet high. It is in a part of Manila called Santa Mesa. There is a whole residential neighborhood on that ground, and you got a very good view.

XQ35. You think it ran to a height of 100 feet? A. I am not a topographer, but it is surprising how altitude does mount up. Certainly from the top of the house I should have been a hundred feet up. It was a big
Jt. 176 house.

XQ36. How far were you from the plants themselves? A. I should think probably 500 yards from the nearest point, possibly three-quarters of a mile from the furthest.

XQ37. Was that your house? A. No. I knew the people in it.

XQ38. Did you know the plants were going to be blown at that time? A. I did.

XQ39. You referred to having gone through the property the following day? A. Yes.

XQ40. What about things like the buildings themselves; I take it they had been damaged to some extent, had they? A. The concrete buildings had been exposed to terrific heat and there was a certain amount of cracking, crumbling and bulging noticeably. The iron buildings were completely buckled, absolutely out of shape and unusable. The tanks had fallen in as a result of burning.

XQ41. You mentioned the fact there were some
Jt. 177 tanks still standing? A. One large and possibly two smaller tanks, which evidently had not gone over; something had gone wrong with the charge.

XQ42. Do you recall on which company's property those tanks were located? A. Not from personal observation. I understand they did belong to Tide Water, but I didn't know the layout sufficiently well to pick out tanks other than our own and Standard-Vacuum, which I knew very well. In any case, the whole face of the property had been

changed by the fire. It wouldn't be easy for one of the terminal officers themselves to tell.

XQ43. What about things like roadways and things of that type; they were still there? A. Roadways were not damaged, I think.

XQ44. What about the piers, did you notice their condition? A. Most of the piers were burnt off. As I recall, down at our end of the property, in an accident on the 26th, certain of the Shell property went then. But I
Jt. 178 didn't pay any attention to the piers up-stream.

XQ45. What other damage was done to your property by the accidental fire of the 26th? A. Not very much. It really flashed through the installation, up what we call an "estero".

XQ46. What is that? A. A big drainage ditch. It flashed up that and it didn't do a great deal of damage.

XQ47. Where did it burn? It must have gone somewhere. A. It started in the river, burnt one or two docks we had and gasoline in the river, the gasoline in the drainage ditch, and ended up at the source of the fuel, which was a Standard alkylate tank.

XQ48. Where was that located, in relation to your property? A. Without a map, I couldn't possibly tell that. With a map I might put my finger on it pretty quickly.

XQ49. I think Mr. Rocke testified that your
Jt. 179 property was the first one that you would come to going up-stream and Standard-Vacuum was the last one? A. That is right.

XQ50. In other words, the fire burned through your property and went to the extreme other end of the property? A. That is not quite right. It went up the river and then up the drainage ditch, without spreading right or left, and then followed the trail to the Standard tank. Really, it was more of a flash at that point than a long-burning fire. It didn't do a fearful lot of damage. In fact, we were working our installation the following day.

XQ51. Was this a drainage ditch which ran through the entire area here, this one you referred to? A. There, again, I would have to have a map. I know it runs through our installation.

XQ52. Where did it run in relation to your tank farm? A. Right alongside it.

XQ53. Wouldn't there have been a tendency if
Jt. 180 the material had gone through the fire wall, which I assume you had around the tank farm, that it

would have gone into this drainage ditch? A. I don't know if I quite get that. Would there be a tendency—

XQ54. If the product overflowed inside the fire wall? A. At the time of the big fire?

XQ55. The big fire or any fire, would it have gone into the drainage ditch? A. No, it was a flood-water ditch. The whole design was to keep the product out of it.

The Commissioner: Off the record.

(Discussion off the record).

The Commissioner: We will adjourn until 10:00 a. m. tomorrow.

(The examination adjourned at 4:30 p. m. to 10:00 a. m., Thursday, January 6, 1949).

Jt. 184 STEPHEN CRAWFURD, resumed the stand and testified further, as follows:

Cross Examination (Continued)

By Mr. Barnes:

XQ56. Mr. Crawfurd, you referred to a meeting you attended on December 12th that was called by General Drake, and you mentioned a Mr. Coleman who was present at that meeting. Was he connected with the Army at that time? A. He had joined the Army as a civilian employee.

XQ57. You said he was a former oil company executive; which company had he been connected with? A. He had for a number of years been connected with Caltex and subsequently he had his own business.

XQ58. You said that you were accompanied by Mr. Lloyd, perhaps by Mr. Wooding, at that meeting; is that right? A. Yes.

XQ59. What positions did they hold with your company? A. Mr. Lloyd was the assistant general manager in Hong Kong and he had taken refuge in Manila on Gov-
Jt. 185 ernment orders from Hong Kong. He was called there. Mr. Wooding was my assistant manager.

XQ60. Was Mr. Lloyd taking any active part in the management of your office at the time? A. No, he was observing, only.

XQ61. How was your office set up; was Mr. Wooding your only assistant or did you have others on a parity with him? A. There was one on a parity with Mr. Wooding.

XQ62. His title was assistant general manager? A. It

was a little different from what it is now. In those days I was manager and he was assistant manager, because we actually were under Hong Kong. Since the war we are no longer under Hong Kong; we have been promoted to general manager and assistant general manager.

XQ63. Who else did you have in your head office, Europeans or Americans, as executives? A. In Manila?

XQ64. In Manila. A. There was a Mr. Agnew, outside operations manager—do you want to have them
Jt. 186 all? There are fifteen or twenty.

XQ65. I was thinking more or less of the top management. A. Agnew was operations manager; Perry, chief engineer; Smith, chief accountant. I think that really covers the heads.

XQ66. Did you have charge of selling, and so forth, or did you have a separate sales organization? A. The assistant manager and myself looked after that.

XQ67. Who was in charge of your terminal? A. His name was George Reed.

XQ68. As you recall this meeting on December 12th, how did you receive your invitation or notification to attend? A. That, I cannot recall the detail of it.

XQ69. Where was the meeting held? A. At San Beda College.

XQ70. Do you recall who opened the meeting, who made the opening remarks? A. General Drake.

Jt. 187 XQ71. As nearly as you can recall now, will you tell us exactly what he said? A. My recollection of it is that he spoke for a very short time and his remarks were chiefly concerned with introducing Colonel Bersina. I don't think he said very much more before he left.

XQ72. He left when he finished his remarks? A. That is my recollection; I believe he did.

XQ73. The balance of the meeting was conducted, then, by Colonel Bersina? A. That is right.

XQ74. Let me ask you this: Was it entirely in the nature of a speech or a statement by Colonel Bersina or was there general discussion? A. There was general discussion.

XQ75. Did you participate in that discussion? A. Yes, to some extent.

XQ76. How did Colonel Bersina open his remarks—as well as you can remember? A. I believe that it was chiefly he was concerned with the necessity of simplifying procedure and avoiding competition for our services
Jt. 188 by numerous commanders in different sections of the Army.

XQ77. Had that been the situation between December 8th and this meeting on December 12th, that you had been receiving from individual commanders requisitions or orders for petroleum products? A. Yes.

XQ78. Did you get the impression from his remarks what they were trying to do was a sort of central purchasing authority? A. A central administration; but we would take our orders from him and him alone.

XQ79. On what subjects was there general discussion at the meeting? A. Well, I think we were all asked for suggestions regarding getting product out quickly; there was some talk about loading in big wooden barges, getting stuff out by water, and there was some talk about how we should load wagon-loads, exactly what should go into them, whether it mattered how they were loaded—discussions of such a general nature.

XQ80. Those were more or less—you might call
Jt. 189 them technical questions surrounding the most expeditious and efficient manner of getting the product to the field installations themselves? A. That is what we were chiefly concerned with, as I recall.

XQ81. Had there been any change in your method of delivering gasoline to the Army and Navy installations between December 8th and December 12th? A. Volume had very greatly increased, but I don't think there had been any great difference. Well, there had been this much: the Army contract was allocated on a bid basis and it was seldom that one company would get the whole business. We had some of it. I don't recall now exactly what items had been awarded to us, but after December 8th we were instructed to deliver all kinds of items which did not occur in the contract.

XQ82. Was that contract customarily let on a monthly, quarterly or annual basis? A. Quarterly basis.

XQ83. You were in the last month of the quar-
Jt. 190 ter? A. Yes, December was the last month.

XQ84. It was a calendar quarter? A. Yes.

XQ85. Was there any change made in the method of your delivery of petroleum products to the armed services after this meeting of December 12th? A. No, we continued to use the same system.

XQ86. This meeting on December 27th or 28th. with Colonel Casey, do you recall how you were invited to that meeting? A. I rather think I was told by one of my staff that the Army had been trying to find me all that morning, and then I went along.

XQ87. Where did you go, whom did you see first when you went there? A. First we were upstairs in an office on the City Wall and interviewed a number of Army officers; I don't really exactly recall who they were.

XQ88. Had you ever seen Colonel Casey before? A. No, I had not.

Jt. 191

XQ89. Were you introduced to him at this meeting? A. My recollection is getting a little bit hazy, because if you would ask me exactly which of those officers was Colonel Casey, I can hardly see him in my mind's eye now. I know he was one of those officers, but which he was, at this length of time, I can't really remember.

XQ90. Who conducted the meeting from the standpoint of the Army? A. He was one of those officers. I can remember talking to an officer, but I can't exactly see his face; he was Colonel Casey.

XQ91. This man whose face you cannot see, was he the man who seemed to be presiding or leading the discussion? A. Yes.

XQ92. How did you know he was Colonel Casey; did he tell you? A. That I can't quite remember. It is one of those things which arose in the course of the discussion.

Jt. 192

XQ93. Was General Marshall there at that meeting? A. I don't believe so.

XQ94. Did you know General Marshall? A. I didn't know him, no.

XQ95. Did you know Mr. Ramme? A. Yes.

XQ96. Was he there? A. He was in that dugout for a part of the time.

XQ97. Did he participate in the meeting, to your knowledge? A. To no extent, I don't believe.

XQ98. Was he in uniform at the time? A. I think he was, yes.

XQ99. I think you stated on your cross-examination that it was stated at that meeting that Colonel Casey was now in command of the Pandacan Terminal; who made that statement? A. He was in command of the Pandacan Terminal.

Jt. 193

Mr. Connelly: I must object to that testimony; I do not remember that testimony either on direct or cross-examination of this witness.

The Commissioner: May I have the question read?

(Question read).

XQ100. Did you make that statement? A. I don't recall at the moment whether I did or not.

XQ101. Was any such statement made at that meeting, to your knowledge? A. Yes, I think so.

XQ102. Who made it? A. I can't tell.

The Commissioner: The objection is overruled.

XQ103. Do you recall stating that the explanation given for that was that the Quartermaster's Department was leaving Manila because MacArthur declared it an open city? A. That was common knowledge at the time.

XQ104. Was that explanation given for the Engineers being in charge of Pandacan Terminal, or was
Jt. 194 that something you assumed? A. I think it might be part assumption and partly discussion at the time. It is my recollection that that was the feeling of the meeting at the time.

XQ105. You do not know whether that was something stated by an Army official or it was something you assumed? A. That anybody actually got up and said: "Gentlemen, the Quartermaster Department is drawing out of Manila and, therefore, only the Engineering people are left", I can't recall just in those words. But my recollection of the position at the time is that that was the statement that was made.

XQ106. Wouldn't the Engineers have left Manila, as an open city, the same as the Quartermaster? A. We realized at that time that it was a rather peculiar open city.

XQ107. Do you recall any discussion at that meeting of the fire that had taken place at the terminal prop-
Jt. 195 erties? A. I don't recall anything, no.

XQ108. Do you recall any discussion at that meeting of the interruption to the electrical supply that followed that fire? A. No, I don't recall.

XQ109. Do you recall any discussion at the meeting with respect to three lighters that were lying off your docks and that had not been loaded, the VST-101, VST-103 and the GEORGIA? A. That wouldn't make much impression on me, because the GEORGIA was a Standard lighter and the VST belonged to the Visayan Stevedore and Transportation Company.

XQ110. Do you know whether those lighters were subsequently loaded through your facilities? A. I can't recall that definitely.

XQ111. Do you recall any discussion at that meeting as to the stocks of petroleum products that might be available

at the various plants? A. I am not sure whether we went into details as to what we still had. There was discussion around getting out as much as possible as quickly
Jt. 196 as possible.

XQ112. Did that discussion revolve about the necessity for transportation facilities and labor for loading, and so forth? A. Those points did arise, I believe.

XQ113. Who brought those points up, do you recall? A. I would say they arose in general discussion; I wouldn't know who brought them up.

XQ114. Did you participate in this discussion? A. Yes.

XQ115. What subjects were you discussing, yourselves, if you can recall? A. My recollection at that meeting is very largely overshadowed with my concern about the possible future destruction, which was one of the main points which came up during the meeting.

The Commissioner: Which meeting is this?

The Witness: The meeting of December 27th or 28th.

Jt. 197 By Mr. Barnes:

XQ116. What did you have to say on that subject? A. I said that I believed that any such destruction should be done by military forces, owing to the fact that civilian personnel would be left in a very difficult position; they would undoubtedly be accused by the Japanese of sabotage, with possible very serious results.

XQ117. The stock of your company was owned by British interests, was it not? A. That is right.

XQ118. As distinguished perhaps from the other three companies, which were principally American? A. That is correct.

XQ119. Do you recall any discussion at this meeting with Colonel Casey of petroleum stocks at points other than Pandacan Terminal? A. Yes, I do. That did not primarily concern me. Those stocks, if I recall rightly, belonged chiefly to Standard-Vacuum.

XQ120. Do you recall where it was mentioned that those stocks existed? A. Very roughly, at certain ware-
Jt. 198 houses in the City of Manila, and tanks in the Port Area.

XQ121. Those would be Standard-Vacuum tanks in the Port Area? A. They were leased tanks, I believe.

XQ122. Do you recall any discussion of the availability or possible availabilty of petroleum products at local com-

panies, such as Marsman Trading or Union Products? A. There, I wouldn't have recollected it but, in hearing previous testimony, it does seem to strike a recollection that there was some mention of that.

XQ123. Do you recall any discussion at that meeting as to the best method of destruction of the product as distinct from the plant? A. I doubt if we had ever considered the two things apart.

XQ124. Do you recall any discussion of the possibility of inter-pumping the product of various types? A. That, again, is a thing I wouldn't have recalled on my
Jt. 199 own, but I do have some vague recollection of that.

XQ125. Do you recall if the objection that was raised to that was the cost and delay that would be involved in the additional piping that would permit the inter-pumping? A. I can't recall the details at all.

XQ126. But you do recall that there was a reluctance expressed on your part, at least, to undertake any demolition yourself? A. Yes.

XQ127. Was that same reluctance expressed by representatives of other companies? A. Yes.

XQ128. Do you recall whether Colonel Casey made any decision or any statement at that time as to the procedure to be followed in the event of the necessity of demolition? A. We definitely left that meeting with the assurance that the military would do the work.

XQ129. Was any mention made about Lieutenant Ramme in connection with that? A. I don't believe so;
Jt. 200 not at that time.

XQ130. You state that this letter that is signed by Colonel Casey, the one dated December 25th, didn't reach you until later? A. That is right.

XQ131. I think you stated that that—this is Plaintiffs' Joint Exhibit 3—was delivered to your home? A. I believe so; I am pretty sure of that.

XQ132. Do you recall how it was delivered? A. No, I can't recall that, but it was brought in by a messenger—from where, I am not sure. Whether it had been brought down from my office or brought direct from the military, I can't recall.

XQ133. But you think it was approximately two days after that meeting? A. I have been a bit confused about these dates. I think I stated at one point, in an affidavit—I am not sure that I did—that I received it on the 25th, but it was definitely after the meeting.

XQ134. Did you notice a difference in dates
Jt. 201 at the time you received it? A. I did, yes.

XQ135. Did you give that any thought? A. Not a great deal. I was chiefly pleased with having got something in writing concerning this whole matter of the Government taking over these facilities.

XQ136. But you made no attempt to give that letter any additional protection, did you? You just left it lying in your house. A. Yes, I left it on my dressing-table. It seemed as safe a place as any at the time.

XQ137. Let me show you this document marked Defendants' Joint Exhibit 1 for identification, and I ask you whether your company ever received a letter having a text similar to that? (Mr. Barnes hands exhibit to witness). A. I can't remember ever having received anything of this nature.

XQ138. Do you remember any discussion at this meeting with Colonel Casey about the delivery of a letter
Jt. 202 of any type to you? A. No, I don't.

XQ139. Did you ever hear of a Lieutenant Buchanan? A. I don't recall that name.

XQ140. Captain McFarland? A. Yes.

XQ141. Who was he? A. My recollection of him is that he was an Air Corps officer whom I had seen on Air Corps business, I think considerably before December 8th. I don't believe I saw him later.

XQ142. Was he present at this meeting with Colonel Casey? A. I wouldn't be sure of that. He might have been. There were a number of officers there.

Mr. Barnes: That is all.
Mr. Connelly: I have nothing further.
The Commissioner: You may step down.

(Witness excused).

Jt. 203 JAMES FRANKLIN PERRINE, a witness produced on behalf of the plaintiffs, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Kissam:

Q1. Mr. Perrine, will you state how long you have been connected with Caltex and its prior companies, Texas Com-

pany (Philippines), and so forth? A. Twenty-one years.

Q2. In 1941, what was your assignment with the company? A. Terminal superintendent.

Q3. At what location? A. Manila.

Q4. Prior to 1941, had you been stationed at the Pandacan Terminal? A. Periodically.

Q5. Going back for how many years? A. From 1928 to 1932 I was assistant superintendent.

Jt. 204 Q6. After 1932 where were you stationed? A. In Cebu.

Q7. As terminal superintendent? A. Yes.

Q8. Who was the regular superintendent at Pandacan in 1941? A. Mr. W. M. Mosely.

Q9. In November of 1941 did he leave the Philippines on regular company leave? A. On November 23rd.

Q10. You replaced him at Pandacan? A. I did.

Q11. Are you able to fix the approximate time when you replaced him? A. I arrived in Manila on November 7th. He departed on November 23rd. I took over immediately after.

Q12. You remained as acting terminal superintendent from the time you took over until the terminal was evacuated? A. I did.

Jt. 205 Q13. I assume that you are thoroughly familiar with the terminal, its physical facilities and its method of operation? A. Yes.

Q14. After you took over Mr. Mosely's duties, in November of 1941, where did you live? A. On the terminal premises.

Q15. And in the house provided for the superintendent? A. Yes, sir.

Q16. Sometime between the 8th and 10th of December, did any Army officers arrive at the Caltex Terminal in a staff car? A. That was on December 10th, yes.

Q17. Will you state who arrived, how they identified themselves and any conversation which they had with you and you had with them? A. A colonel in the Quartermaster Corps, who identified himself as Colonel McConnell, together with one lieutenant and three enlisted men. Colonel McConnell stated that the lieutenant and the three enlisted men would act as security guards within our premises.

Jt. 206 Q18. Did Colonel McConnell leave the lieutenant and the three enlisted men on the Caltex premises? A. He did.

Q19. Prior to December 10th, had there been other general guards in and about the Pandacan Terminal? A. On the outside of the fence, patrolling the railroad.

Q20. But these three guards who came with Colonel McConnell stayed on the Caltex property as distinguished from the general properties at Pandacan; is that correct? A. That is correct.

Q21. Sometime after December 10th did any other Army representatives, Army officers or enlisted men, arrive at the Caltex Terminal and talk with you? A. Yes, sir.

Q22. Can you fix the date of this second arrival? A. About the 15th of December, one American sergeant and seven or eight privates, the sergeant stating that
Jt. 207 he was representing Colonel McConnell and that the Army was taking over, and he was representing Colonel McConnell.

Q23. Do you remember the name of the sergeant? A. I do not recall.

Q24. Did the sergeant make his office any place at the Caltex Terminal? A. Within our office, yes.

Q25. How long did the sergeant remain there, starting from the time of his arrival which you fix, I think, as December 15th? A. Yes.

Q26. How long after December 15th did the sergeant remain? A. Until after the Army placed the demolition charges around the premises.

Q27. That would be somewhere around the 31st of December? A. I would say the 29th or 30th.

Q28. You mean after they commenced placing the demolition charges? A. Yes.

Jt. 208 Q29. How about the eight enlisted men who came with the sergeant, what did they do? A. They would walk around the premises and see that the laborers were not loitering, and make reports to me in order that I might go out and get after the men.

Q30. Would you say they actively participated in the affairs of the terminal at Caltex? A. Basically, yes.

Q31. The sergeant, what did he do so far as you observed? A. He devoted his time to inspecting the orders that came in or were received by telephone or over the teletype, in order to see that no stocks were sent to users other than essential services or the United States Army.

Q32. Do you happen to know whether or not he rejected any orders that were received at the terminal? A. He did not.

Q33. But he looked over all of the orders that
Jt. 209 came in? A. Yes.

Q34. Do you know a man named Coleman? A. Yes, sir.

Q35. That is "Pinky" Coleman; who is he? A. He had formerly been connected with Texaco.

Q36. What was his occupation or status in December of 1941, say for the period commencing December 12th, at least? A. His connection with the Army was a go-between between the Army and the various oil companies.

Q37. Had somebody advised you to that effect? A. Our manager, the Caltex manager, Mr. Roesholm.

Q38. Told you that? A. He did.

Q39. Did Mr. Roesholm give you any company instructions with respect to any orders or directions that might come from Mr. Coleman? A. That they were to be obeyed.

Q40. After Mr. Roesholm gave you such advice, did you ever have any instructions or receive any instruc-
Jt. 210 tions from Mr. Coleman? A. Yes.

Q41. Do you recollect some of them, just for the purpose of illustration? A. He asked if we had any trucks that were available—tank trucks—to go on a convoy.

Q42. Did you follow any instructions given by Mr. Coleman that resulted in a convoy being made up? A. I did.

Q43. From time to time, after December 12th, did you receive further directions from Mr. Coleman relating to properties of Caltex? A. Convoys only.

Q44. His principal concern seemed to be with setting up convoys? A. Yes.

Q45. In any event, is it a fact you followed all instructions given by Mr. Coleman after Mr. Roesholm advised you he was a representative of the Army and authorized to give you direct instructions? A. I followed
Jt. 211 orders, yes, sir.

Q46. You stated you were living in the superintendent's residence at Pandacan?

Mr. Barnes: I object to that; there has been no such testimony.

The Commissioner: Find out whether the witness did.

Q47. Didn't you state you were living in the superintendent's residence at Pandacan? A. On the premises, yes.

Q48. On arrival and after you took over as terminal superintendent, where did you live? A. I moved into the superintendent's house.

Q49. Right at the Pandacan Terminal? A. Yes.

Q50. In the building that has previously been identified in this proceeding as the superintendent's residence? A. That is right.

Q51. After moving into the superintendent's residence at the terminal site, how long did you maintain residence there, until what date? A. Until the Standard
Jt. 212 Oil fire.

Q52. After the fire did you move from the superintendent's residence? A. I moved to the Michell Apartments.

Q53. Sometime during the period while you were at the Michell Apartments, did you receive a telephone call from an Army officer, who identified himself as Lieutenant Ramme? A. I did.

Q54. Can you fix the time of the call and what was said? A. It was between twelve and one o'clock in the early morning of the 27th.

Q55. Of December? A. Yes.

Q56. We are talking, of course, about 1941? A. Yes.

Q57. What did Lieutenant Ramme say? A. He requested that I report to the terminal.

Q58. At one o'clock in the morning? A. Exactly.

Q59. What did you say? A. That I would be
Jt. 213 glad to, provided he would furnish the transportation.

Q60. Did he furnish the transportation? A. He did.

Q61. You went to the terminal? A. Yes.

Q62. When you got there, where did you go and whom did you see? A. I was advised by Lieutenant Ramme to report to the office he had temporarily set up within the Standard Oil premises, which I did.

Q63. On arrival, who was there? A. Lieutenant Ramme; two other lieutenants were introduced to me as Lieutenant McIntosh and Koch or Kolch.

Q64. Did you have a conversation with Lieutenant Ramme? A. I did, yes, sir.

Q65. Will you state the substance of the conversation? A. He had an Army demolition squad under him and they had just completed demolition charges within the
Jt. 214 Standard Oil premises, around the tanks and in various warehouses and so forth. He said he would like to inspect the Caltex property for a like purpose.

Q66. Did he make such an inspection? A. We did, yes, sir.

Q67. Did you assist him and stay with him while the inspection was being made? A. I secured the keys from the office and flash-lights and we made the inspection, yes, sir.

Q68. After the premises were inspected by Lieutenant Ramme, did you have any further conversation with the lieutenant? A. He stated further that sometime during the night they would place demolition charges around our tanks and within the warehouses.

Q69. Did the lieutenant volunteer to give you anything in writing relating to the Pandacan Terminal? A. He did, yes, sir.

Q70. What did he volunteer to do? A. He gave me a receipt, written in pencil.

Jt. 215 Q71. Do you recollect what the receipt stated? A. It stated that the receipt was for all stocks, rolling stock, buildings, pipe-lines, pumps and supplies within Caltex premises.

Q72. Did you ask him for this receipt or suggest that he give it to you? A. I did not.

Q73. You say the receipt was on a piece of paper; what kind of paper, do you remember? A. Ordinary scratch paper.

Q74. It was written in pencil? A. Yes.

Q75. How was the receipt signed? A. "Lt. Ramme, First Lieutenant, Engineer Corps."

Q76. What did you do with the receipt? A. I kept that on my person until internment.

Q77. And thereafter? A. It was given to one of our office staff members, either Mr. W. E. Murray or J. M. Clelland.

Q78. Has that receipt, since liberation, ever
Jt. 216 been found to your knowledge? A. Not to my knowledge.

Q79. Did you ever see it again? A. I did not.

Q80. Sometime after December 10th, 1941, was there a labor pool at the Pandacan Terminal under the direction of the Army? A. There was a labor pool established before the 15th, before the sergeant and the seven enlisted men arrived.

Q81. That was subsequent to the time when Colonel McConnell came and introduced the lieutenant and the three guards? A. After that time.

Q82. Did you have any conversation either with Colonel McConnell or anybody else who advised you that the Army would provide additional laborers; in other words, how

did you learn a pool was set up, who told you about it? A. The superintendent of the Standard-Vacuum advised me that such a pool had been established.

Jt. 217 Q83. Did he tell you who had set it up? A. He said it was—

Mr. Barnes: I object to this, your Honor, as being hearsay.

Q84. You stated in response to a question that I put that the labor pool had been established? A. Yes.

Q85. I want to know how you found it out and who established it, so far as you know.

Mr. Barnes: I object to anything that is hearsay. The question which is pending—

The Commissioner: Objection sustained.

Q86. From what source did you get information regarding the establishment of a labor pool? A. From the superintendent of Standard-Vacuum.

Q87. When you talked with Colonel McConnell, did he say anything about if you needed additional labor that the Army would see that you got it, or anything to that effect? A. He did.

Q88. What did he say? A. He said they were

Jt. 218 contemplating establishing a pool.

Q89. After Colonel McConnell said that, were you advised by someone that there was a labor pool at Pandacan? A. By Mr. Moffat, the superintendent of Standard-Vacuum.

Q90. From time to time did you utilize the services of that pool? A. Through the instigation of the Army sergeant, yes.

Q91. What do you mean by that? A. He advised me to call on this pool to assist in loading railroad cars and lighters for water transportation.

Q92. Did you from time to time, at the suggestion of the Army sergeant, call upon the pool? A. Yes.

Q93. Are you able to fix the date when you first knew of the existence of the pool, approximately? A. It was between the 10th and the 15th.

Q94. Of December? A. Yes.

Jt. 219 Q95. At what time, if any, were you ordered to evacuate the terminal by military direction? A. Approximately 9:00 a.m. on the morning of December 31st Lieutenant Ramme called the various superintendents of

the oil companies together, stating that he expected to be definitely advised about noon as to the time the demolition would take effect.

Q96. Did he fix a time when evacuation should be accomplished? A. At noon on December 31st, while having lunch, Lieutenant Ramme called my office and they, in turn, relayed it to me that Lieutenant Ramme wanted to see me. I went to Lieutenant Ramme's office at Standard-Vacuum and he stated that he had received advice from his headquarters that we were to vacate not later than 3:00 p.m. that afternoon, December 31st.

Q97. Did you vacate, pursuant to his direction? A. We did.

Jt. 220 Q98. From, let us say, the time when the lieutenant that was introduced by Colonel McConnell, with the guards—you fixed that date as December 10th? A. Yes.

Q99. Did the Caltex Terminal remain open from that time on until the time of evacuation? A. That is, for supplying customers as well as the Army?

Q100. For all purposes. A. I would say not longer than a few days, which would be about the 12th.

Q101. After that period, what happened? A. The products were frozen for sale and were to be utilized for military persons and essential transportation companies and hospitals, fire departments, and so forth.

Q102. Can you fix the date when thereafter all activities related only to Army orders or essential services, as directed by Army orders? A. I would say immediately thereafter.

Q103. After what? A. After December 12th.

Jt. 221 Q104. Did the terminal work on a twenty-four hour basis or a twelve hour basis or an eight hour basis, or what basis? A. Twenty-four hour basis.

Q105. After the Army sergeant and the eight enlisted men arrived, did you nevertheless still continue under their direction the use of your Caltex employees? A. We did.

Q106. Your full staff remained? A. The skilled employees, yes, sir.

Q107. Did you take directions from the Army sergeant as he gave them? A. We did.

Q108. After you left the terminal on the day you were ordered to evacuate, where did you go? A. I returned to my place in the Michell Apartment.

Q109. You were later interned? A. Yes.

Q110. And were interned until you were liberated sometime in 1945? A. That is correct.

Jt. 222 Mr. Kissam: That is all.

Cross Examination

By Mr. Barnes:

XQ111. Who replaced you at Cebu when you went to Pandacan? A. Mr. Leonard Self.

XQ112. When you fixed the date as about December 10th, 1941, when Colonel McConnell, accompanied by a lieutenant and three enlisted men arrived— A. Yes.

XQ113. Colonel McConnel told you the lieutenant and the three enlisted men were to be a security guard? A. Yes.

XQ114. Where did they stay? A. The lieutenant went to the Standard Oil, the three enlisted men remained; two took leave and one man took duty.

XQ115. You had one man on guard all the time? A. Yes.

XQ116. Where was he stationed? A. He was
Jt. 223 patrolling the entire area with our watchmen.

XQ117. How many watchmen did you have? A. We had three within the premises.

XQ118. What did he do, did he patrol with them in rotation, or how did he work it out to cover the whole area? A. He covered in rotation, with the major portion of his time being devoted to the water-front, during the nights especially.

XQ119. The net result of this was you had one armed guard on duty at your plant after this time that Colonel McConnell came? A. That is right.

XQ120. How long did the armed guards remain there? A. As I recall, they left with the sergeant and the seven other enlisted men.

XQ121. Do you recall what branch of the service those guards were connected with—were they MPs? A. Infantrymen.

XQ122. The next time anybody came—and you
Jt. 224 fixed the date on the 15th of December, when the sergeant came with the seven or eight enlisted men? A. Yes.

XQ123. What did they actually do? You said that the enlisted men circulated through the plant; is that right? A. They did.

XQ124. You were on a twenty-four hour operation; were

they working on a twenty-four hour basis or were two or three on and the others off? A. They were working on an eight-hour shift.

XQ125. You said that they reported to you any inefficiency in the labor operation, or things of that type? A. Yes.

XQ126. That was all that they were doing there; is that it? A. Yes.

XQ127. Were they helping with any of the laboring themselves? A. Soldiers wanted to show their strength occasionally; they would push a drum and assist
Jt. 225. in loading railroad cars.

XQ128. But they reported to you things that they thought seemed to be going poorly around the station? A. Yes.

XQ129. They were acting as trouble-shooters, or something of that type for you? A. Yes.

XQ130. You said all the sergeant did was inspect the incoming orders? A. Yes.

XQ131. You said he never rejected any order that came in, to your knowledge? A. He didn't.

XQ132. Did he give you any other instructions? A. As I recall, he changed some of the orders relating to stocks to be loaded. Occasionally we would get orders for drums of motor gases and he would change that to cans of motor gas.

XQ133. But that was a change in the Army order? A. He was the one who gave me the order.

XQ134. Aside from that, did he give you any other directions or instructions? A. I recall where there
Jt. 226 were some railroad cars in there that were loaded and had been there for several hours and hadn't been shunted onto the main line, and we had no empties, and he requested that I get after the railroad station or the Army authorities who were at the railroad station—who was Captain Gallup, I believe it was.

XQ135. G-a-l-l-u-p? A. I don't know how you spell his name.

XQ136. Did you do that? A. I did, by telephone.

XQ137. Other than these two instances, were there any others? A. I don't recall.

XQ138. Did this sergeant work full twenty-four hour duty? A. No.

XQ139. How long did he work? A. He was there from—he would be there six o'clock in the morning, when I arrived, and when I went to get my dinner in the evening

he would be there and when I got back he was not
Jt. 227 there.

XQ140. Roughly, what time would that figure? A. I figure he was on duty at least twelve to fourteen hours a day.

XQ141. Did anybody come on and relieve him when he left? A. He designated one of the other guards to fill in. At night there wasn't too much doing, other than loading cascos, that it a huge dugout.

XQ142. Those are boats of some type? A. Yes.

XQ143. Those were loaded with the idea of towing them into advance position through the waterways? A. Yes, for water transportation.

XQ144. Mr. Coleman had formerly been with your company, I take it? A. Yes, the Texaco, formerly.

XQ145. That was the former name of your company? A. Yes.

XQ146. When did he terminate his connections with the company? A. That I don't recall.

Jt. 228 XQ147. Was it five years before or two years before? A. Fifteen years before.

XQ148. You stated that Mr. Coleman called you only in relation to making up convoys; is that right? A. Yes.

XQ149. What did he say when he called you; did he say, "Do you have any trucks available to go into convoy?" Or how did he phrase his questions? A. He asked if we had trucks that were suitable to make a long convoy or a long trip.

XQ150. What did you tell him, you told him whether you did or did not? A. Yes.

XQ151. What did he say if you said you did not have any available? A. I don't recall.

XQ152. Did you ever have a situation where you did not have any trucks available when he called you? A. No, our trucks were usually utilized for city de-
Jt. 229 liveries.

XQ153. Did you have trucks available for long convoys? A. We did.

XQ154. Did you always have them available when he called you? A. They weren't held available for that particular purpose.

XQ155. Did you have them available when he called you? A. We did.

XQ156. What did he say when you told him you had some trucks available? A. He said that we may continue to use these trucks for local city deliveries until late in

the evening, but he wanted them loaded and sent to a centrally located place between five and six in the evening.

XQ157. When would the trucks get back, do you recall? A. The following night.

XQ158. They would be gone approximately
Jt. 230 twenty-four hours? A. Yes.

XQ159. How many times did Mr. Coleman call you in connection with that? A. Twice.

XQ160. Did he ever give you any other instructions or directions? A. No.

XQ161. Why was it you moved out of the superintendent's house at the terminal? A. As I said, I was working from six in the morning until ten, sometimes twelve, at night. These air raids were all hours of the day and night. When you went to sleep you didn't care about sleeping next to a gasoline tank that might be bombed. The manager advised me to move out.

XQ162. Who was the manager? A. Mr. Roesholm.

XQ163. Was there any connection between the Standard-Vacuum fire and your moving out? A. The Standard-Vacuum fire occurred after.

XQ164. You said you remained in the superintendent's house until the time of the Standard-Vacuum fire.
Jt. 231 A. Yes.

XQ165. Was there any connection between that fire and your moving? A. No.

XQ166. Where was this apartment house you moved to, in relation to the terminal property; how far away? A. I would say four to five miles.

XQ167. Was it a furnished apartment? A. It was.

XQ168. Did you take any of the furniture from the superintendent's house when you moved? A. I did not.

XQ169. Where was that Standard-Vacuum fire in relation to Caltex property? A. To the south.

XQ170. Did it burn across the Caltex property at all? A. It did not.

XQ171. Did oil on the Pasig River adjacent to the property burn at all? A. It didn't reach our place.
Jt. 232 XQ172. You said that Lieutenant Ramme called you about 1:00 a. m. on the morning of December 27th and that you then met him at the Standard-Vacuum office, and then went to the terminal with him? A. Yes.

XQ173. Was the terminal operating on a twenty-four hour basis? A. At that time we couldn't, because we had no lights. However we had had some of the laborers washing drums preparatory to filling the following day.

XQ174. During what period of time were you without lights? A. In that Pandacan area, from the time of the fire until the 31st.

XQ175. When was the fire? A. It was either Christmas Day or the day following.

XQ176. Don't you recall that the lights came on again on December 29th? A. In the City of Manila.

Jt. 233 XQ177. No, at the Terminal? A. I don't recall.

XQ178. You said that when Lieutenant Ramme wanted to go through the Caltex property to inspect it that you had to get the key and the flash-light. Why did you have to get a key? A. At that time we weren't working at night, other than washing drums, which was outside work.

XQ179. What was the key for? A. To open the warehouse.

XQ180. So that the terminal was operating on a twenty-four hour basis except during this period of approximately a week, as you recall it, from the fire until electric current was restored? A. Yes.

XQ181. That restoration came too late, if your recollection of the 31st is right, the restoration of elecric current didn't do any good with relation to night operation? A. At that time it wasn't necessary to have electric light for the washing of drums. It was quite a large moon shining and all this work was outside. It didn't require

Jt. 234 any inside work.

XQ182. How large a piece of paper was it on which Lieutenant Ramme wrote this receipt? A. I would say it was six by eight.

XQ183. Where did he get it, do you recall? A. A scratch pad, lying on his desk.

XQ184. When did he give that to you, before or after the inspection? A. After.

XQ185. You went back to the Standard-Vacuum office? A. Yes.

XQ186. Did the receipt have any salutation opening; was it addressed to you? A. No, it was addressed to Caltex; merely one word, "Caltex".

XQ187. What did it say, as nearly as you can remember its words? A. It was a receipt for the stocks, rolling stock, tanks, buildings, supplies, pumps and so forth.

XQ188. Was it dated? A. It was dated.

Jt. 235 XQ189. What date? A. That would be the same date that he called me, which was either early morning of the 27th or the 28th.

XQ190. You are not sure now whether it was the 27th or the 28th? A. It was after the fire, a very short time after. I would say not later than the early morning of the 28th.

XQ191. Did you call anybody in your office and advise him that you had this receipt? A. I did.

XQ192. Whom did you call? A. Mr. Roesholm.

XQ193. When did you call him? A. The following day.

XQ194. The day after you got the receipt or the same day? A. The same morning, later in the morning.

XQ195. Did you read the receipt to him? A. I
Jt. 236 did.

XQ196. Did he give you any instructions what to do with it? A. He said to carry it on my person, it would be picked up later.

XQ197. It was not picked up before you were interned? A. It was not.

XQ198. Why did you give it to either Mr. Murray or Mr. Clelland? A. Our manager being a neutral, Danish, to be exact, was not interned.

XQ199. That is Mr. Roesholm? A. Yes. Mr. Murray and Mr. Clelland had contacts with the outside and, passing notes on and receiving food and laundry, and so forth, they had a better opportunity to get this to Mr. Roesholm than I did, myself.

XQ200. Did they tell you that or did you figure that out? A. I figured it out myself.

XQ201. What was Mr. Murray's position with
Jt. 237 the company? A. Assistant general manager.

XQ202. What was Mr. Clelland's position? A. He was Manila District manager.

XQ203. Where were you interned at the time? A. Santa Tomas.

XQ204. Approximately when was this that you gave this receipt to them? A. The exact date I do not recall, but immediately after internment we were permitted liberties by contacting the outside, until the Japanese later suppressed that by putting up a sawali mat, placing this on the iron fence on the front, prohibiting all direct contact with the outside.

XQ205. Was this done before this mat was placed on or afterward? A. I believe it was afterward.

XQ206. How long was it before that mat was placed on there, six months or a year, or less time than that? A. Within the first thirty days.

XQ207. So it was at least thirty days after you
Jt. 238 were interned before you did this? A. Yes.

XQ208. Was it during the year 1942? A. January or February, 1942.

XQ209. You gave this receipt to them sometime in January or February, 1942? A. After the matting was placed.

XQ210. When did you give it to them, during the first six months of 1942? A. Yes.

XQ211. During the first three months? A. I wouldn't be positive.

XQ212. Have you, yourself, made any attempt to find that receipt since you were released from internment? A. I have not.

XQ213. Aside from the time he called you in to go over the installation with you and the time he called on December 31st, did Lieutenant Ramme give you any instructions at all? A. During our inspection he asked how we were operating and he did state that he was in charge and if we ran into difficulties to let him know. I told
Jt. 239 him, that inasmuch as we had armed representatives there, that things were running along smoothly. He said then he wouldn't bother with our place at all.

XQ214. So he never gave you any orders other than the two times he called you in? A. That is right.

XQ215. Did any other military personnel ever give you any orders or directions or instructions? A. Only Mr. Coleman and the sergeant.

XQ216. The Army sergeant, Mr. Coleman and Lieutenant Ramme? A. Yes.

XQ217. We have gone over the nature and the extent of the instructions given by all three of them? A. Yes.

XQ218. There aren't any other instructions or directions you received from them or anyone else that you can recall during this period? A. No.

Mr. Barnes: That is all.

Jt. 240 Mr. Kissam: I have no questions; except I do not want to have the record indicate we have let Mr. Perrine go. We want him in connection with our valuation proof. But I do not think this is the time for it.

The Commissioner: Very well.

We will take a recess.

(A short recess was taken).

(Discussion off the record).

The Commissioner: Let the record now show that the

joint hearing is concluded and is adjourned subject to further notice and information.

(The joint hearing adjourned at twelve noon).

Jt. 245 * * * * *

CHARLES CHISHOLM DRAKE, residing at 7035 Wilson Lane, Bethesda, Maryland, a witness produced on behalf of the plaintiffs, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

Direct Examination

By Mr. Connelly:

Q1. Your address, General Drake? A. 7035 Wilson Lane, Bethesda, Maryland.

Q2. Are you the same General Charles C. Drake who testified in a proceeding in this court entitled Caltex (Philippines), Inc., Plaintiff, against United States of America, Defendant, Docket No. 48324, on July 20th, 1948? A. I am.

Mr. Connelly: At this point, if the Commissioner pleases, I should like to read in evidence a stipulation of the parties:

Jt. 246 IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that if General Charles Chisholm Drake, Colonel Michael A. Quinn, Miss Mary Alice Clements, Colonel John N. Shanks, Colonel Joseph E. Kramer, Colonel Otto Harwood and Colonel John D. Cook were called as witnesses in person at the trial of the above-entitled actions, they would testify respectively in accordance with the testimony set forth on pages 1 through 305, inclusive, of the transcript of testimony presently on file in this court in connection with the action entitled *Caltex (Philippines), Inc.* v. *United States*, Docket No. 48324; and pages 93 through 146, inclusive, of the transcript of testimony presently on file in this court in connection with the action entitled *Caltex (Philippines), Inc.* v. *United States*, Docket No. 48322.

IT IS FURTHER STIPULATED AND AGREED that such testimony may be read in evidence in the above-entitled actions with the same force and effect as if the witnesses were testify-

ing therein in person; provided, however, that
Jt. 247 defendant preserves all objections made and exceptions taken at the time of the taking of such testimony and plaintiffs preserve all objections made and exceptions taken by the plaintiff in that action at the time of the taking of such testimony.

Is that satisfactory, Mr. Barnes?

Mr. Barnes: That is satisfactory, sir.

Q3. General Drake, subsequently to the giving of your testimony on July 20th, 1948, to which we have referred, have you had an opportunity to read over the transcript of your testimony? A. Yes, I read it over yesterday.

Q4. Is it still, in so far as you know and recall, true and correct? A. Yes, it is.

Mr. Connelly: You may examine.

Cross Examination

By Mr. Barnes:

XQ5. Have you been subpoenaed to appear here, General Drake? A. I received a subpoena.

Jt. 248 XQ6. When? A. Yesterday.

XQ7. What did you do with it? A. I have it in my pocket.

XQ8. Have you consulted any officer of the Judge Advocate General's Department in connection with it? A. No.

XQ9. Are you familiar with Army regulations? A. I cannot say that I am familiar with the present Army regulations, but I was familiar with the Army regulations when I was on active duty in the Army.

Mr. Barnes: That is all.

Mr. Connelly: That is all. Thank you, General Drake.

* * * * *

Jt. 303 * * * * *

Barbara E. Root, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination

By Mr. Barnes:

Q1. Captain Root, will you state your full name?

Jt. 304 A. Barbara E. Root, Captain, General Staff, Serial No. L-162.

Q2. What is your address, Captain Root? A. My official address?

Q3. Yes. A. I am Chief of the Historical Branch of the Plans and Operations Division, General Staff, Corps, United States Army, Pentagon, Washington 25, D. C.

Q4. The Plans and Operations Division is the Division that was originally known as the War Plans Division, is it not? A. That is correct, sir.

Mr. Barnes: Off the record, please.

(Here followed discussion off the record.)

By Mr. Barnes:

Q5. I think that you indicated that you were the head of the Historical Section. A. That's right.

Q6. What are your duties in that connection? A. To answer any questions that might come up on any particular problems from 1922 to 1945.

Q7. Do you have the custody of, or access to, the files? A. Yes; I have access to all of the files of the War
J. 305 Plans Division, up through the Plans and Operations Division.

Q8. I show you a document, which is marked "Philippine Department Plan-Orange (1940 Revision)," and ask you if you located that document in the files of the Plans and Operations Division? A. Yes; the original of Register No. 32 is in the files of the Plans and Operations Division.

Q9. And is that photostatic copy, which is before you, a copy of that plan, as it appears in the files? A. Yes, it is.

Mr. Barnes: I offer in evidence, Your Honor, as Defendant's Joint Exhibit No. 5, the Orange Plan for the Philippines Department.

I might say that this has already been made available, approximately two weeks ago, to Plaintiffs' photostatic service, so they might have copies of it made.

Mr. Connolly: I have some questions as to just what the document is. May I examine on voir dire before I state my objection?

The Commissioner: You may.

By Mr. Connolly:

Q10. Captain Root, I understand you, yourself, located this document in the War— A. The original of the document, sir.

Jt. 306 Q11. Do you recall what instructions you received as to what you were to look for? A. For the Philippines Department Plan-Orange (1940 Revision).

Q12. I call your attention to the note appearing on the cover of the document, which reads:

"Copy No. 6 of this Plan already on file in TAG."

What does "TAG" mean? A. The Adjutant General's Service. The records of Plans and Operations Division indicate that Copy No. 6 was the Philippine Department's copy, which was forwarded from Australia, together with the particular evacuated records to the Adjutant General. Copy No. 6 was then retired by the War Plans Division for the historical file. Later it was sent to the United States Military Advisory group in the Philippines, where it now is.

Q13. Continuing with the note on the cover, it says:

"This copy eventually should be permanently filed in TAG for Hist. reference purposes since it is not known whether a copy was evacuated from the Philippine Dept."

A. May I call your attention to the fact, sir, that a portion of the note has been scratched out?

Q14. Yes.

Jt. 307 Then it continues, "It was approved only by the Departmental Commander and did not require W. D. approval."

Am I correct in understanding that "WD" refers to the War Department in that case? A. Yes, sir.

Q15. Now, can you tell us when that little note, which I have just read to you, was placed upon the cover of that file? A. No, sir, I cannot.

Q16. Do you know what is referred to in the last sentence, "It was approved only by the Departmental Commander"; is that the Philippine Departmental Commander? A. I don't know, sir.

Q17. Is there any other departmental commander that you know of, that might have had any function in connection with this file? A. Not to the best of my knowledge.

Q18. Now underneath the cover are two letters, one dated June 10, 1941, and— A. This first page is a copy of this letter here (indicating).

Q19. Yes; in other words, they are exact duplicates of the first letter of June 10, 1941? A. Yes.

Jt. 308 Q20. And the second, dated August 13, 1941,— each of which apparently has to do with the

changes made in the plan as originally filed? A. Yes, sir.

Q21. Have there been received by your Department any such documents subsequent, or bearing dates subsequent to August 13, 1941? A. No, sir.

Q22. Do you know whether there are any such documents in existence anywhere? A. According to the files of the War Plans Division of 1941, there were two changes to this plan only.

Q23. That is to say, only to the two— A. The two right here (indicating), yes.

Q24. So far as any additonal changes, which may have been made by the Philippines Departmental Commander, you would not be in position to state as to whether those were made, or whether— A. If The Philippines Department Commander had made a change in accordance with the plan upon which this is based, he was to send the changes to all holders of the documents.

Q25. That is, in the normal course of events,
Jt. 309 he would have? A. Yes.

Q26. But as to events that took place after August, 1941, I take it we can't be sure that the normal course of procedure was followed? A. That is true. There are just these two changes in our files.

Q27. Now, there are certain numbers in the lower right hand corner of this photostatic copy, that appear to number the pages consecutively from 1 to 203, I think. Do those numbers appear on the original copy? A. In pencil.

Q28. Using those numbers, then, to identify the pages, and page 8 at the top, "Section I-Secrecy," paragraph 1 reads:

"Unless otherwise specifically authorized by Philippine Department Headquarters, the provisions of this plan and all subordinate plans thereto will be made known to officers of the United States Army only."

Do you have in your files copies of any of the subordinate plans referred to in that section? A. I have found none.

Q29. Have you made any search? A. I have.

Q30. You have made a search for such subordinate plans?
A. I have.

Jt. 310 Q31. And at page 16, paragraph 20,— A. May I qualify my last statement?

Q32. Surely. A. It is possible that there may be some on file, but they have not been made available to me.

Q33. Paragraph 20, under the heading "Joint Army and Navy Action," and sub-paragraph (a), reads:

"Joint Army and Navy Action will be in conformity with the provisions of the current 'Army and Navy Joint Defense Plan for Philippine Islands Coastal Frontier' and mutual agreements made in pursuance of those provisions."

Then sub-paragraph (b) reads:

"Pertinent data from the Joint Plan and mutual agreements will be included in the appropriate department General Staff annexes, Department service plans, and Harbor Defense Plans."

Have you located any copy of the plans coming under the description of Department Service Plans in that section? A. I have not.

Q34. Have you made search for those? A. No, I have not.

Q35. Have you located any harbor defense plans? A. No, sir.

Jt. 311 Q36. Have you made a search for those? A. No, sir.

Q37. This document does not, I take it, include any of the plans described in that section as department service plans or harbor defense plans? A. I am not familiar with the contents of the plan, sir.

Q38. Now, beginning at page 17, under the heading "Section VII—Plans," there is a paragraph introduced by these words: "Based upon the Philippine Department Plan—Orange (1940 Revision and its annexes), plans will be prepared as follows."

Then there are 18 separately numbered sub-paragraphs describing various plans, including No. 14, being the Ordnance Plan by the Department Ordnance Officer; No. 15, Quartermaster Plan, by Department Quartermaster.

Do you have in your file any of the plans referred to in that section? A. I have not seen any in the Adjutant General's file marked "Orange." Those plans are the responsibility of the theatre commander and not the War Department.

Q39. As a matter of fact, those plans have, do they not, a different distribution schedule than the Orange Plan itself? A. I don't know, sir.

Jt. 312 Q40. I call your attention to page 19 of the document, indicating the schedule of distribution for the plans referred to in the preceding section VII. A. Excuse me, sir. I believe that that distribution section refers to this plan, because it indicates copies of No. 31 and No. 32 to the War Plans Division.

Q41. Yes; that schedule is the schedule for distribution—A. Of this plan.

Q42. This Orange Plan (1940)? A. Yes, sir.

Q43. And then, with reference to the plans described in Paragraph 29, beginning on page 17, there is a provision, is there not, namely, that sufficient copies of that plan, as finally approved, would be prepared, to include in the distribution thereof two copies for the Department War Plans Office, and at least one reserved copy for the office of origin.

Now, under that section, would it not have been the normal practice for a copy of any of the 18 subordinate plans referred to at pages 17 and 18, to have gone to the War Department? A. No, sir.

Q44. It would not? A. No, sir.

Jt. 313 Q45. You did not, I take it, make any special search in the War Department files? A. I was not requested to, sir.

Q46. You were not told that there was any special interest in the Quartermaster Plan in this case? A. No, sir.

Q47. Now, at page 177, under the heading "IX. Staff Plans," paragraph 33-(b) reads:

"Staff Plans: Appropriate Staff Plans, in draft form, will be developed to conform to the basic plan and the tactical operations contemplated therein, in a realistic manner; recommended dispositions, under these plans, are expected to apply to future maneuver situations, as a practical test. In general, these plans will contain," etc., and there are set forth several paragraphs, indicating what they should contain.

Do you have in your files any of the staff plans referred to in that section? A. I do not know, sir, but I doubt it.

Q48. You have not made any search for those? A. I have not, sir.

Q49. At page 142, under the heading of Paragraph 5, "Procurement of Supplies," sub-paragraph (d)

Jt. 314 makes this provision:

"Chiefs of Services will develop and maintain procurement programs as exhibits to special staff plans, showing war requirements, and containing the following data, viz.:

"Required items.

"Required quantities.

"Priority of items.
"Procurement source.
"Point of delivery."

Do you have in your files any of the procurement programs referred to in that section? A. I made no such search.

Q50. You do not know if they are in your files, or not? A. I do not.

Q51. Again, at page 163, near the top of the page, with reference to the Motor Transport Service, this statement appears:

"Detail organization of the Motor Transport Service is contained in Annex No. 3, basic Q.M. Plan."

That, I take it, refers to the basic quartermaster plan? A. I don't know, sir.

Q52. Do you know— A. "Q.M." refers to
Jt. 315 Quartermaster, but I do not know anything about the plan.

Q53. You do not know whether you have in your file, and you haven't made any search for anything fitting that description? A. No, sir.

Q54. Going back, for the moment, to page 8, I call your attention to Section II, Sub Section 2 and sub paragraph B(2), which reads:

"The defense must be conducted by existing units of the United States Army and Navy in the Philippine Islands, augmented only by such personnel and facilities as are available locally."

Have you made any search for any written plan, setting forth a program for augmenting the existing units by personnel and facilities available locally? A. No, sir.

Q55. And you do not know whether any such plans exist? A. No, sir.

Q56. Similarly, at page 142, under the general heading of Procurement and Storage of Supplies, sub-paragraph (c) reads:

"Local available supplies, facilities and equipment must eventually be taken full advantage of, to augment
Jt. 316 existing defense reserves."

Do you know whether there are in existence any plans with reference to compliance with that sub-section? A. I do not, sir.

Q57. And you haven't made any search for them? A. No, sir.

Mr. Connolly: In view of the examination on voir dire, if the Court please, I fail to see what relevance this offer of Mr. Barnes has. If he can make any statement with reference to it, I will be glad to hear it.

Mr. Barnes: Your Honor, I have just called your attention to the reference in General Drake's testimony as to what he meant, when he used the phrase "war plans," and he said that he was referring to the Quartermaster's Supplement to the strategic plan for the defense of the Philippines.

This document, using the page numbers that appear in the lower right-hand corner, which Mr. Connolly called attention to, starting at page 133, contains the amendments or annexes to the Orange Plan, to the strategic plan. This is the document that was described by General Drake, and the other so-called military witnesses.

Mr. Connolly: May I have the page reference to that testimony, because I do not recall any testimony explaining the document that counsel now adduces here.

Jt. 317 Mr. Barnes: It starts at the bottom of page 74 and continues on page 75.

Mr. Connolly: My point, of course, is that it is perfectly clear from this testimony, that General Drake was referring to that part of the war plans which refer to the Quartermaster end of it.

The Commissioner: I understand, Mr. Connolly, and if you will read on, he is referring to the notes in the back part of this plan.

Mr. Barnes: That is attached as an appendix to the strategic plan, and if you will look at page 133, you will see it.

Mr. Connolly: I looked at page 133, and even asked Captain Root about it and the other plans referred to, and she then said she knew nothing about it, that it was not on file in her department.

Mr. Barnes: Page 133?

Mr. Connolly: 133. If I could perhaps make a brief statement, Your Honor, at page 16, there is a statement to which I call the witness' attention:

"Pertinent data from the joint plan and mutual agreements will be included in the appropriate department General Staff Annexes, Department Service Plans and Harbor Defense Plans."

Jt. 318 This document contains what purports to be the basic orange plan, and it contains four divisions, classified as Department General Staff Annexes; it does not contain the Department Service plans, which I have been told were the list of the various different departments to which I called the witness' attention, including the Quartermaster Department, and at page 133, which is the beginning of the G-4 Annex—I said earlier that I read from page 133, but I was confused on that. That sheet is the commencement of the G-4 Annex, to the various portions of which I directed the witness' attention, and which, itself, contemplates the subordinate Quartermaster plans and the list; so that, with this document, we have absolutely nothing that can be related to anything that General Drake testified to, so far as the plans he referred to are concerned.

By the Commissioner:

Q58. Captain, what is G-4? A. Logistics and Supplies.

Mr. Connolly: The portion of that G-4 Annex, to which I desire to call Your Honor's attention, begins at page 177, which I could not find a moment ago. That is a part of the very G-4 Annex to which Mr. Barnes refers.

The Commissioner: Page what?

Mr. Connolly: Page 177, in those numbers at Jt. 319 the lower right hand corner.

Mr. Barnes: Your Honor, I think that Mr. Connolly is being very capricious now. I have produced here the document which General Drake states, on page 74 of the transcript, was the document he was referring to. He said, "A part of our plan was attached as an appendix," and I have produced that document.

Mr. Connolly: Mr. Barnes says he has produced that document, but the document he has produced bears intrinsic evidence of the fact that he has not produced the document referred to by General Drake.

The Commissioner: That is a matter of interpretation of General Drake's testimony. I understood what he was talking about was what is attached to the appendix here. It may be there were other plans.

Off the record.

(Here followed discussion off the record.)

The Commissioner: Mr. Kissam, do you wish to object to this offer, also?

Mr. Kissam: I would like to ask the Captain a question, if I may.

The Commissioner: You may.

Mr. Kissam: I will join in the objection, unless the relevancy of the plan is demonstrated, so far as Cal-
Jt. 320 tex is concerned.

By Mr. Kissam:

Q59. Captain, under the Army's system of command, how many special services or special staffs are carried under G-4? A. Under the technical services, sir, the Quartermaster—it has been changed since the plan was made out, and I don't feel I am fully qualified to testify on the situation in 1940, since I was not a portion of the Army at that time.

Q60. You will agree, will you not, that in 1940, and even today, there is what is known as the General Staff, and then special staffs; is that correct? A. That is essentially true, sir, but the Army has been reorganized several times.

Q61. But not reorganized to a greater degree than that? A. I don't know what its organization was in 1940.

Q62. You have G-1, G-2, G-3, and G-4? A. Yes.

Q63. G-1, G-1, G-2, G-3, and G-4 encompass what is called the General Staff, under the Army organization? A. Of any division?

Q64. That's right, and you may have A-1, but they are all 1, 2, 3, and 4? A. That is right.

Jt. 321 Q65. And 1 means Personnel? A. Yes.

Q66. 2 means Intelligence, and 3 means Plans and Training? A. Organization and training.

Q67. And 4, Supplies and Logistics? A. That is correct.

Q68. How do you classify the functions of the Quartermaster? A. The Quartermaster comes under G-4. G-4 is responsible for the over-all policy and planning with regard to logistics.

Q69. And the Quartermaster is a part of the special staff, is he not? A. Correct, sir.

Q70. Now, just look at pages 177 and 177-A—I will show you my copy—and the numbers I have referred to are the pencil numbers, and you will notice, under the heading "Staff Plans," at the top of page 177— A. Yes.

Q71. And it provides, in paragraph 33-b:

"Appropriate staff plans, in draft form, will be developed to conform to the basic plan of the tactical operations contemplated therein," etc. A. Yes, sir.

Jt. 322 Q72. And then you see on the next page, page 177-A, under sub-paragraph (f), "Service Agencies," the following:

"The Service Agencies primarily concerned in the formulation of these plans, are:—"

and then it lists eight agencies, beginning with the Department Quartermaster; is that correct? A. Yes, sir.

Q73. You agree, then, do you not, that if there was a Department Quartermaster plan to be made a part of this Orange Plan, under the language that I have just read to you, the plan was to be prepared; is that right? A. I believe, sir, that G-4 has been the primary implementation for the basic plan. G-4, in turn, was responsible for gathering the material from the technical services.

Q74. That is right, but one of the technical services for which G-4, we will say, had the ultimate responsibility, was the Department Quartermaster? A. I believe so, sir.

Q75. Now, you are not suggesting to the Court, are you, that anywhere in the document which you have identified for Mr. Barnes, is the Department Quartermaster Plan?

A. I believe that my attention has been called to

Jt. 323 the G-4 Annex.

Q76. That is correct. My question is, are you suggesting that, included in the papers produced by Mr. Barnes, there is anything which can be properly classified as the Department Quartermaster Plan? A. Since I have not read the plan page by page, I don't feel I am qualified to answer that question.

Q77. You will agree, will you not, that there is a difference between the Department Quartermaster Plan and the G-4 Annex? A. If there is a Quartermaster Plan, I presume so, sir.

Mr. Kissam: I would like to point out to the Court that, at page 19, referred to by Mr. Barnes, in the testimony of General Drake, in question 38, on direct examination, the General was asked:

"Q. Did the plan contemplate the use of gasoline and other petroleum products? A. Yes; we had a section of the plan, which we called the gasoline supply plan."

Mr. Kissam: Now, I will ask Mr. Barnes if he will point out in the paper he has presented, to be received in evidence, a section that is captioned "Gasoline Supply Plan." If so, that may eliminate the problem.

Jt. 324 Mr. Barnes: I recall no such caption in it, but that might be a fault of my memory.

Mr. Kissam: Well, I have examined the plan, and I will make this representation:—

Mr. Barnes: It might also involve General Drake's memory.

Mr. Kissam: The situation is simply this: The papers that have been offered represent what has been called the basic plan, which is an expression of policy of the Department Commander. That plan, as demonstrated by Mr. Connolly, has to be supplemented by the plan of special services. That is provided in the language of the plan, I believe.

It is the same thing, if I refer to a building construction contract, and do not show you the plans and specifications and drawings, and this document, by its terms, is obviously incomplete.

All of the testimony of the Army officers to date has referred to the section of the plan called "Quartermaster Plan," and that has not been offered; and according to the Captain, she was not asked to look for it.

The Commissioner: The objection is overruled and the exhibit is received.

(Said Orange Plan (1940) marked "Defendant's Joint Exhibit 5," was admitted in evidence and made a part of this record.)

Jt. 325 The Commissioner: I might make this observation about the exhibit:

From a hurried examination of the document, known as the Orange Plan, and based more on counsel's questions on voir dire than on my own examination, it does appear that these are parts of the plan to which General Drake may or may not have referred; but on the basis of the testimony in the record, it looks to me as if the plan that is introduced is the one which he identified in the record.

If there are other portions of it, which are material here, I think it is a matter for the plantiffs on rebuttal to explain.

Mr. Connolly: Excuse me, but I did not hear the last.

The Commissioner: I say I think it devolves on the plaintiffs to explain the situation.

Mr. Kissam: In view of that ruling, I will make the further objection that the document is incomplete.

The Commissioner: It does not appear to me to be, in the terms of General Drake's testimony.

I am leaving the door open to you; in the event it is incomplete, you can complete it, but referring to the testimony, as I read it, the document that has been offered is the one that the General identified.

Jt. 326 By Mr. Barnes:

Q78. Captain Root, may I direct your attention to the page which, on the lower right hand corner, carries the pencil number 6. I think that was the title page of the original plan, was it not? A. Yes, sir.

Q79. It indicates the underlying authority, where— A. "Concentration Plan of the Army Strategical Plan-Orange 1938."

Q80. Have you examined that document? A. Yes, I have.

Q81. Is that document classified? A. It is.

Q82. What does that document provide, with respect to the filing of war plans by the Department Commander; does it require the filing— A. It requires that two copies be filed, sir.

Q83. With the war— A. With the War Plans Division.

Q84. Does it also require that copies of any amendments to those plans be filed? A. Yes, sir.

Mr. Barnes: That is all.

Mr Connolly: I have one or two questions, Your Jt. 327 Honor.

Cross-Examination

By Mr. Connolly:

Q85. You realize, Captain, that you and I have not had an opportunity to study this document, but I would like to get as clear as I can about its set-up.

Now, the document that has been introduced, the 203-page document breaks down and explains the sheets that are on top.

First is what I take it we may call the basic plan, which begins at page 5. Beginning at page 5, it runs through, does it not, with exhibits, to page 25? A. Yes, it appears to, sir.

Q86. In other words, beginning with page 26 is the first of the annexes to the basic plan? A. Page 26 is the first annex, yes.

Q87. Page 26 begins the G-1 Annex? A. Yes.

Q88. Now, a part of that basic plan, that is to say, in-

cluded between pages 5 and 25, is a section at page 17, entitled, "Plans"; is that correct? A. Yes, sir.

Q89. Now, that section, which refers to the Philippine Department Plan Orange (1940 Revision) and its annexes, then says:

"Based upon those, plans will be prepared, as
Jt. 328 follows," and lists 18 categories, that I listed to you before; that is correct, is it not? A. Yes.

Q90. So far as most of those 18 separate categories of plans, including the Quartermaster Plan, am I correct in recalling your testimony earlier that those plans were not required to be filed with the War Department? A. In accordance with Paragraph 30, the plans are to be filed, two copies, with the Department War Plans Officer, who is a member of the Philippine staff.

Q91. That is, the Philippines Command—in other words, so far as the Philippines Command is concerned, he would have his copy of the basic plan, his copy of the annexes, and his copy of these subordinate plans; is that correct? A. I don't know whether he would, or not.

Q92. Under the normal practice? A. Under the normal practice, yes.

Q93. And those subsidiary plans, which would be presumably filed with his copy of the basic plan and the annexes, would not, in the normal practices be submitted to the War Department for filing here? A. Not in the normal practice.

Q94. Then just to complete the order of the content of
the document, from page 26 to 83, inclusive, it
Jt. 329 consists, does it not, of the G-1 Annex? A. Yes, sir.

Q95. Then beginning at page 84, and continuing through page 109, is the G-2 Annex? A. Yes, sir.

Q96. Then follows, beginning at page 110, the G-3 Annex, which takes off through page 132? A. 133, sir.

Q97. Isn't 133 the beginning of G-4? A. Yes. Excuse me.

Q98. So it goes through 132, and then G-4 is the Annex, beginning at page 133, and going through the balance of this document, with the exhibits? A. No, sir, it only goes to page 201. These (indicating) were pieces of paper added to the original plan.

Q99. You are referring now to the last three sheets? A. These were added by the Department of the Army or the

War Department at that time, by the officer who was going through the plans at headquarters.

Q100. Now, that part of the document, which you have identified as G-4 Annex, which runs from 133 on to 201, at page 177—that is to say, the G-4 Annex, itself, refers, at page 177, to these various staff plans, to which Mr. Kissam called your attention a moment ago; and am I also
Jt. 330 correct in understanding that those staff plans, referred to in that section of the G-4 Annex, are not on file in your department? A. I do not believe that they are on file; I have not searched for them.

Q101. You have not made a search for them? A. No.

Mr. Connolly: That is all.

By Mr. Kissam:

Q102. What type of request did Mr. Barnes make of you; as a result of which you produced the paper you identified this morning? What did he say he wanted? A. I was not requested by Mr. Barnes; I was requested by an officer in the Plans and Operations Division, Colonel Freeman.

Q103. What was that? A. Colonel Freeman asked me for the Philippine Department Plan-Orange (1943).

Q104. Did you have any knowledge whether that particular part of the plan was of special interest? A. No, sir; I only knew it was in connection with the case for the Department of Justice.

Q105. Now, I think you said you were not familiar with certain Army procedures in 1940, because you were not in the Army at that time; is that correct? A. That
Jt. 331 is correct.

Q106. When did you go in the Army? A. 1942, sir, in July.

Q107. So you, of course, have no personal knowledge whatever about this so-called Orange Plan, even in the limited form that has been produced here? A. No, sir.

Q108. Now, in connection with the plans, of course, I suppose you notice that it had been presented over the signatures of several officers. The first one appears to be the name of D. H. Torrey, Colonel, AGD. Do you know if Colonel Torrey is still available as a witness for the Government? A. I do not, no, sir.

Q109. Did you make any effort to find out? A. No, sir.

Q110. He, if available, of course, would know something about the plan? A. I presume so.

Q111. It is presented over the signature of Major General George Grunert. Do you know whether Major General Grunert is available to the Government? A. I do not, sir.

Q112. He, of course, being the Commanding General, under whose name the plan was submitted, would

Jt. 332 be charged with knowing something about the plan? A. I presume he would, sir.

Q113. Did Mr. Barnes know that you had no personal knowledge about the plan? A. Yes, I believe Mr. Barnes did.

Mr. Kissam: That is all.

The Commissioner: Anything further?

Mr. Barnes: No further questions, sir.

(Witness excused.)

The Commissioner: Off the record.

(Here followed discussion off the record.)

The Commissioner: Suppose we recess until 1:45 o'clock.

(Thereupon, a recess was taken in the hearing until 1:45 o'clock, p. m.)

Jt. 333 . . . . . .

HUGH J. CASEY, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination

By Mr. Barnes:

Q1. Will you state your full name, please? A. Major General Hugh J. Casey.

Q2. Are you on active duty at the present time, General Casey? A. I am.

Q3. Where is your duty station now? A. As Division Engineer of the Ohio River Division, at Cincinnati, Ohio; Post Office and Customs House, Box 1159, is the address.

Q4. Where were you stationed in December of 1941? A. I was Chief Engineer at Headquarters, at USAFFE, United States Army Forces of the Far East.

Q5. How long had you held that position, at

Jt. 334 that time? A. Since 8 October, 1941.

Q6. Had you had any prior service in the Phil-

ippines, General Casey? A. I had been there from 1937 to 1940 as Engineer Adviser to the Philippine Government, and also Military Assistant to General MacArthur, who was then Military Adviser to the Philippine Government; and my duties in that latter phase consisted of training an organization of a corps of engineers of the Philippine Army.

As Engineer Adviser, I was making hydro-electric power surveys and flood control surveys for the Philippine Government.

Q7. Coming to the period in December, 1941, subsequent to the outbreak of the war, did you give any consideration to the question of the stocks of petroleum products in the Philippines? A. I gave consideration to the destruction of all items that might be of value to the enemy, including oil stocks.

Q8. Is the destruction of materials of that type, one of the duties and responsibilities of the Engineers? A. Yes; the Engineers have one mission: The matter of demolitions, the demolitions of communications, roads, bridges, signal installation, construction supplies, oil stocks, anything that may be useful to the enemy, in the event we cannot withdraw it and utilize it for our own purposes.

Jt. 335

Q9. What was the strategic situation, at that point, with respect to the value of petroleum products to the Japanese, as you saw it? A. Petroleum stocks were of particular strategic concern, because we knew that Japan was short of oil stocks, and the Japanese had not had access to the N.E.I.

Q10. The Netherland East Indies? A. Yes; the Netherland East Indies, and the oil reserves there, and we knew that Japan was very much interested in acquiring any potential oil stocks, and that they would be of great value to them in the conduct of their campaign, and we took special measures for the control and destruction of oil stocks throughout the Philippines.

Q11. Did you discuss with your superior officers the question of the destruction of oil stocks in the Philippines? A. I don't recall any special discussion, but I know, routinely and currently, we discussed generally the demolition plans, including that; and I know, on various occasions, I did discuss specifically the situation of certain installations.

Q12. Directing your attention specifically now to December 24, had you been out of Manila for a period of time, prior to that time? A. I had been out for a short period of time, I had been in North Luzon, where the Japanese forces were advancing on Manila, and I checked on our demolition program there, particularly on the placement of demolition charges for the destruction of communications, and specifically organizing reserve positions to which the forward forces were to withdraw.

Jt. 336

I had Colonel Manano with me, and we assembled a large force of Filipinos, by the thousands, and we organized this position, and I returned to Manila on the night of December 24.

Q13. Who had represented your own engineers in Manila, during your absence? A. Major Gay.

Q14. What was the situation which you found in Manila on your return, so far as the presence of Army Headquarters were concerned? A. Headquarters had suddenly been quickly removed to Corregidor that day, and when I returned, I found only my assistant, Major Gay, and just a scattering of personnel, but most of the personnel that had been in Headquarters of Usafe, vacated during the day to Corregidor, taking certain records with them, but leaving many of the records and the furniture, and what-not still there in Headquarters, but most of the personnel was gone and very limited personnel was left.

Jt. 337

Q15. Who was the senior officer in Manila, at that time, in charge of the rear echelon command? A. Brigadier General Marshall.

Q16. What was his position? A. He was Deputy Chief of Staff.

Q17. Who was Chief of Staff? A. Colonel Richard K. Sutherland.

Q18. So far as USAFFE is concerned, if it is any different from the ordinary Army set-up, how were the functions broken down, to your knowledge, between the Chief of Staff and Deputy Chief of Staff? A. General Marshall's duties consisted primarily on matters of logistics, that is, supplies, and those functions that were other than tactical. The Chief of Staff was primarily concerned with tactical operations, and of course had responsibility for the logistic functions, but he delegated most of them to General Marshall, and General Marshall was the primary one handling all matters of logistics and supplies.

Q19. When you returned to Manila on December 24, did Major Gay pass on to you any questions with respect, specifically, to the petroleum products, that had been received from Headquarters? A. He advised me of this general move of Headquarters and indicated to me that it was our—our attention was specifically invited to the matter of the destruction or demolition of certain facilities, and referring specifically to oil stocks and radio stations; and apparently did not cover some of the other things that were of vital importance, such as railroads, but had stressed, as I recall it now, those two particular items.

Jt. 338

Q20. Do you recall Lieutenant Ramme? A. I do.

Q21. Do you recall when you first met him? A. As I recall, it was on Christmas day, when he reported to my office, having been referred by another officer, whom he had previously contacted; and he had indicated that he was ready to enlist or serve with the United States Army, and after consultation with him in accordance with the normal practice—we had been doing that, talking to somebody within three to five minutes, to find out how old he was, what his education was, and what he had been doing, and commission him a First Lieutenant or Second Lieutenant, or hire him as a civilian; but we were not going through the normal administrative procedure.

Jt. 339

I had then to see that he was equipped with a uniform and some semblance of arms, and usually get them off on a mission within an hour.

Things were moving fast.

Q22. And the normal administrative procedure with respect to confirming his commission would take place at some later date? A. Yes; we knew that that could be handled later, with the appropriate records, with an indication of the action taken.

Q23. Do you remember the orders you gave to Lieutenant Ramme? A. Inasmuch as Lieutenant Ramme had been employed with the Standard-Vacuum Company, as I recall it, and he was also an engineer and knew the Pandacan installation; and inasmuch as we had had, as one mission, the ultimate destruction of the Pandacan installation, I gave him that mission, and indicated that I was going to take him on to handle the operations of that Pandacan Depot, its preparation for destruction, as his immediate mission.

Q24. Did you give him any other details, with respect to the removal of the products from Pandacan? A. I don't

know, for example, whether I gave him the orders
Jt. 340 right at that time, but I think his first mission was just to go out and get some uniforms and get equipped, because I knew the mission he had prior to going over to Pandacan was one of releasing certain oil stocks, which we had under Army control, down in the port area.

We had constructed, either immediately prior to the war, or probably during December, two large oil tanks erected there, and had them filled with bunker oil, and inasmuch as no more ships were coming out, I gave him the mission, first of all, of disposing of those oil stocks by releasing the valves; and I know, on the completion of that mission, we then had the mission of going over and preparing the Pandacan oil installations.

While it is the Quartermaster's function to handle distribution, etc., of oil stocks, as an engineer, I was jumping into many things that were other than engineering operations, in order to get things done, because much was happening at that time; and my instructions to him, at some time or other, were definitely to the effect that we were to secure and get out from those terminals every last ounce or drop of gas or Diesel oil or lubricant that we could, and up to Bataan, because we knew, at that time, that the number of days of retention of Manila were very limited, and it was important to get generating plants, lumber, barbed wire, tools, and everything over to Bataan as
Jt. 341 quickly as possible, within the limits of transportation.

Incidental to that, we had another engineer, Colonel Gallup, who had been placed in charge of the Manila Railroad, and through our instructions to him, we controlled the shipment of materials in and out of the installation, such as oil and gasoline, in order to get the maximum amount of stock from that installation.

Q25. General Casey, let me direct your attention to this document, Plaintiffs' Joint Exhibit 3, and ask you whether that is a copy of a letter which you wrote on December 25, 1941? A. It is.

Q26. Did you write it on that day, as you recall it now? A. I am quite certain I did.

Q27. Do you recall what was done with respect to its delivery? A. I do not know how it was delivered, but I rather assume that it would be delivered by messenger, by our forces. Our administrative forces, by that time, were depleted, and I probably would have turned it over to Major Gray, saying, "Make sure that this letter goes out,

because it is an important letter." This indicates there was a shortage of help, yet we have it addressed
Jt. 342 to the four agencies, just checked off the copy that goes to each one.

Q28. A copy was checked for each of the four, was it? A. Yes, sir.

Q29. And your best recollection of what transpired would be, that it was sent out for delivery on or about the date that appears on it? A. Yes.

Q30. What was your purpose in sending that letter to the Oil Companies?

Mr. Connolly: I object to the question, Your Honor, as calling for the mental operations of the witness.

Mr. Kissam: The same objection on behalf of Caltex.

The Commissioner: Why is the mental operation of the witness not pertinent?

Mr. Connolly: What possible effect could the unexpressed opinion of a witness have on this case? Any undisclosed purpose, which he may have had in his mind, cannot be binding on these plaintiffs.

Mr. Kissam. There is no ambiguity in the letter, either.

The Commissioner: Off the record a minute.

(Here followed discussion off the record.)

The Commissioner: Suppose, Mr. Barnes, that you change the form of the question. I think we understand the problem.

Jt. 343 Let the record show that counsel had been asked to change the form of the question.

By Mr. Barnes:

Q31. General Casey, I direct your attention to the first sentence of this letter, which states:

"Effective immediately, all petroleum stocks, storage and handling facilities, etc., at your Manila, Pandacan oil depot, are requisitioned by the United States Army."

Did you, in selecting and using those words, intend to vest title to those properties in the United States, or was that one of your duties and responsibilities?

Mr. Connolly: That is objected to, if the Court please, as immaterial. Will Your Honor hear me, very briefly, on that point? After all, there is here a legal question, which will have to be determined by the Court.

The Commissioner: Very definitely.

Mr. Connolly: Briefly, the acts that were actually done and performed by the United States Army, at that time, served to create a claim of the character that is here being asserted. In other words, whether these petitioners are entitled to compensation for the properties that were taken from them, is going to depend upon the Court's determination of the legal question, on the basis of what was done.

Jt. 344 The Commissioner: Quite so.

Mr. Connolly: If, in taking a particular action, any individual member of the Army had one intention, or another intention, in the back of his mind, or if there was a different understanding of what the legal consequences of his actions were, I submit that is wholly immaterial.

The Commissioner: I do not think any of us have any trouble with that proposition, Mr. Connolly.

Let me put you a hypothetical case, and see if we can get closer to it. My understanding of the law may not be too clear and may need clarification.

Suppose that hostilities were under way right here in the City of Washington, and there was an invading force right here at Washington Circle, out about five or six blocks, and the United States Army is along Pennsylvania Avenue, and my automobile is out there.

If the Army takes my automobile and goes down into hostilities, they have requisitioned it for hostilities; whereas, if they take it and go back the other way for supplies, that is something else. There is a difference in which way the Army goes with that automobile.

Mr. Connolly: Of course, our position is that, in either event, having taken our automobile from us, under those circumstances, it is a question of responsibility to

Jt. 345 compensate us for the fair value of the property; but whichever way it turns out is not going to be affected, at all, by some understanding or misunderstanding, possibly, in the mind of the particular individual as to the legal consequences of his actions.

The Commissioner: That is the very purpose of my question. Is not there some distinction between taking property for use in hostilities and taking property for supplies?

Mr. Connolly: That is the position which has been asserted by the Government in this case, and presumably will be argued, when we get to the end of the case, as to whether there is such a difference, or not.

However, it is our position that, in either event, whether

the property is taken for use, that is to say, for day-to-day activities, or whether it is taken for the specific purpose of destroying it or preventing it from falling into the hands of the enemy,—in either case, it is a matter of law, and the person whose property has been taken is entitled to just compensation from the Government for its taking.

However, that does not seem to me to be involved in our present question, according to the witness, and the vice of it, it seems to me, is this. As General Casey has so well stated, at that time, they had their plans, and the
Jt. 346 representatives of the United States Army were primarily concerned with doing what to them seemed to be necessary to do under the circumstances; they were not particularly, I assume, conscious of knowing, and always perhaps seeking advice upon all of the legal implications of their actions.

This question calls for what is, in effect, perhaps, the ultimate legal conclusion, and that is, did this witness, in his own mind, have in mind that, by taking the action that he did take, it might impose liability upon the United States, by reason of transferring the ownership of their property to the Government?

I do not know what was in the witness' mind.

The Commissioner: I do not think we are particularly interested in what the witness may have thought about the legal consequences of his actions, in terms of whether he took title, or did not. How about that, Mr. Barnes; am I right or wrong?

Mr. Barnes: Well, the distinction which is made, or has been made by the Supreme Court, is that property, which is taken for destruction, to prevent it falling into the enemy's hands, does not create a cause of action.

The Commissioner: On that basis, does it not come down to a matter of intent? Was the intent of taking for destruction, or taking for use?

Jt. 347 Mr. Connolly: One of the objections to the distinction which counsel for the Government seeks to draw, between taking for use and taking for destruction, is precisely that objection, that the difference of intent is a fairly intangible and ephemeral sort of issue to attempt to decide.

If that is, or should be, the rule of law in this case, if the property were taken for the purpose of destruction, then the person whose property was taken away would not be entitled to compensation, and I would agree that the

purpose of taking would be necessarily a material issue in the case; but even in that event, I do not think it proper to express the purpose in terms of an individual's conception, or the idea of the individual person who is charged with carrying out the function assigned to him.

I think that the purpose would have to be determined objectively, in terms of the orders that were issued by the Army, what action was taken, and what happened, with reference to the property.

The Commissioner: If you were dealing with a corporation, and you had on the stand an officer of the corporation, who was responsible for a given action, would not his intent be evidence of the corporation's intent?

Mr. Connolly: The state of mind of an individual comes in issue very seldom, indeed; and on the other
Jt. 348 hand, I cannot think of a situation, in which an individual's intent, or state of mind of a corporation, would be material, except perhaps in a conspiracy case, where they were charged with conspiring with other officers of the corporation, where the element of intent might become important.

The Commissioner: Let us take this discussion off the record.

(Here followed discussion off the record.)

The Commissioner: Let us take a short recess.

(Thereupon, a short recess was taken in the hearing.)

The Commissioner: It is my view that it is very important to weigh the issue in this case as to whether the property was taken with the intent to use it, or with intent to destroy it, and it seems to me this witness is in position to tell us as much as one man can.

I am, therefore, going to permit him to testify to his state of mind at the time. The objection is overruled.

Mr. Kissam: Your Honor, please, I made the objection, but I did not give my reasons. I would like to give my reasons, for the sake of the record.

The Commissioner: Very well.

Mr. Kissam: I think that the testimony is improper and violates the constitutional rights of my client, for these reasons: The plaintiff here—I am speaking now
Jt. 349 of the Caltex Company—has introduced documentary evidence and, thus far, uncontradicted oral testimony, to the effect that it was planned, both in

writing and in fact, that the Armed Forces, in the event of war, would take over not only the stocks but the facilities at Pandacan.

I say "documentary as well as oral," because we have offered in evidence Exhibit 3, which is a report made after the war and now a part of the War Department records, in which General Drake expressly used the language that he met with the Oil Companies and outlined the plan which the Army had at that time for the use of petroleum products of the Companies, and their facilities. That is in the record, and that is uncontradicted.

In addition, we have thus far the uncontradicted testimony of General Drake that he had a meeting, and explained what he intended to do, and the Oil Companies agreed.

We have the uncontradicted testimony of the war plans officer, Colonel Harvey, that the Army intended to take over not only the facilities—not only the supplies, but the facilities, and I think he used the expression that they wanted to keep it going as a going concern.

Then we have the testimony of Colonel Kramer.

All of this is consistent, and today they have introduced in evidence what is a part of the Orange Plan, Jt. 350 which, by its own terms, confirms the same purpose.

Now, here, you have a letter in which there is no ambiguity; it has not been challenged on that ground; and as Mr. Connolly stated, it is a question of action, not intent.

This letter was addressed to four different companies. It is just a matter of agency. If I get a letter from you, you represent yourself as authorized to make a commitment on behalf of your Company, you have got to go and establish, (1) that you had no authority to make the commitment; and (2) that I had no right to rely on it.

Now, our theory of this case is not based on General Casey's letter; we base our case on the taking at the earlier date, around the 15th of December.

The first officers came to Pandacan on the 10th of December, and another formal group came around the 15th, which is the date we allege of the requisitioning of the facilities and supplies.

Now, the letter of General Casey, which has no ambiguity and which has not been challenged on that ground, is nothing more or less than further corroborative proof of what the Army did.

What the Army intended to do, I think, is something that certainly becomes a question of law on the effect of what they did; and I think to let in testimony now
Jt. 351 of what an officer, writing on December 25, intended to do, rather than merely to have in the record what he did do, in the light of the state of the record, namely, the uncontradicted records of General Drake, the uncontradicted testimony of General Drake, Colonel Kramer, Colonel Cook, and possibly the receipt in evidence of part of the Orange Plan that went in evidence today,—it seems to me is violating the very basic rules of evidence.

I appreciated what you said, informally, off of the record, that you want to get all of the information you can get, but I think it has to be subject to the rules of evidence, and I think this is improper, and the objection is well founded and should be sustained.

Mr. Tumulty: I want to record an objection on behalf of Tidewater Oil Company, on the ground it is a contractual document that is unambiguous, and the witness cannot be heard to impeach it.

In respect of the Tidewater claim, and in respect of the stocks of materials, the witness has already testified, emphatically, that his intention was to requisition such stocks for use to the extent that it was possible to take out the last drop of it. I do not think he could be heard now to impeach the document, by saying it was not his intention to requisition for use, but for some other purpose.

Jt. 352 The Commissioner: Proceed.

Mr. Connolly: May we have an exception?

The Commissioner: Sure, note an exception.

Mr. Barnes: Without going back and trying to find the original question, perhaps I can phrase it in these words:

By Mr. Barnes:

Q32. General Casey, why did you write that letter of December 25? A. I think my objective is contained in the document, itself. In the second sentence, it says that the action deemed necessary for the destruction of this property will be handled by the United States Army.

The purpose of this document was two-fold: (1) To secure control of these facilities, so we could destroy them; and of course prior to the destruction, to remove, first of all, from those facilities, everything useful in the way of petroleum stocks, within the capacity of our transportation facilities.

And another major purpose in giving this letter, as we did, to other facilities, like radio stations and others, when we effect the ultimate destruction, we want to be sure that whoever it was at that property had a piece of paper, which would protect him from possibly being shot by the Japanese when they came on in, and accused civilians, not in
Jt. 353 the armed forces, of sabotage.

Q33. Do you recall, General Casey, having a meeting with representatives of the Oil Companies at some time after December 25? A. Yes; within a few days after this letter and after Lieutenant Ramme had been commissioned, and had received instructions about preparing Pandacan oil installations for demolition, and based on his summary and report of the situation, we thought it was desirable and necessary to assemble the representatives of the oil companies to a general conference, to coordinate our activities in connection with this projected operation.

Q34. Let me show you this document, which has been marked as Plaintiff's Joint Exhibit 5 for identification, and ask you whether that is a copy of the report which you prepared of what transpired at that meeting? A. It is.

Q35. What was the procedure which you followed in dictating reports of this type?

Mr. Kissam: I object to that. He is now talking about a particular record, and that is all right, but I do not know that we are concerned with general procedures.

The Commissioner: The objection is overruled.

Mr. Kissam: An exception.

Jt. 354 The Witness: Incidental to keeping records of activities, inasmuch as our personnel were absent at different times, I required that the limited staff that we had reduce to writing the telephone conversations and instructions received.

Sometimes we would write them out on scratch paper, and sometimes we could dictate them, but we tried to maintain records of our different activities in connection with the various questions that might come up of keeping the Chief of Staff or G-3 or G-4 advised.

For example, on this conference, I don't recall when I assembled this (indicating); I know that it was not on the day it is dated, the 28th, because I have a note here of subsequent matters taken up with me on December 29; but as and when we could, we would reduce these notes to typewriting and other matters of record.

I do know that, during that hectic week of the 24th to 31st,

many things were happening, and I naturally kept a lot of little pencil notes here:

On the trip to Corregidor, when I went over there early January 1, and various days when we could get to it, we would reduce those memoranda to w ng; but I am sure this note was typed certainly not l than within two weeks; it might have been typed within the next two or three or four days thereafter.

Jt. 355 By Mr. Barnes:

Q36. Was this one of the records which you took out of the Philippines with you, when you were evacuated? A. It was not.

Q37. How does there happen to be such a report as this? A. Our basic records were kept in a series of folders of operation reports, little diaries of this type (indicating), and were kept by Major Gay, who was my immediate assistant. Major Gay is now dead.

When I left in March, 1942, I left instructions with them that I was leaving these records—I took just a few—and I told them that, if anything happened, if they don't get back, or if I don't get back, to be sure to try and preserve these.

When we returned to Manila in January, 1944, and I got in Bilabid Prison, right after our entry, I saw a number of American prisoners there, and one of them gave me two messages; one from Major Kircher and one from Major Gay, which told about various activities, but they included in their letters some sketches of where they had deposited these records in some little cans, and these were concealed in a place up on Corregidor; and later on, after we took Corregidor, we went in and located this point and
Jt. 356 found these records. Others at another location we were unable to find. Among these were copies of the recovered records that had been left by Major Gay.

Q38. Does this memorandum correctly set forth your recollection of what transpired at that conference? A. It does, with the possible exception of the timing at which this undated letter was given to the representatives.

I know that, at the time this was written,—by that time, this undated letter had been furnished to the representatives, but I am not sure, as I recall back, whether that letter was still waiting General Marshall's signature. I had it prepared for his signature, but whether it had been signed at tha time, or whether it was signed subsequent to the meeti and later delivered, I don't know.

I do know that the undated letter referred to here was furnished to the representatives, but whether it was furnished to them at that conference, or not, I do not know.

Q39. Let me ask you this: Do you recall where the conference was held? A. It was held at my office at 1 Calle Victoria in Manila.

Q40. Did you call the meeting? A. I called the
Jt. 357 meeting, and I had previously, in telephone conversations, I believe, gotten in touch, through Lieutenant Ramme—gotten in touch with the four oil companies, all of whom had representatives there.

Q41. Do you recall that the meeting was interrupted by an air raid? A. I recall that it was. Normally, we would have proceeded in headquarters, but inasmuch as we had a number of civilian representatives, and they were a little concerned, we moved down to a so-called air-raid shelter, but which really was not an air-raid shelter, because it did not have a covering, but it had a little psychological protective effect on some of them.

Q42. What were the circumstances there? Were you crowded together somewhat? A. Very crowded in this little tunnel. It was probably about ten or twelve feet wide, and maybe 40 feet long.

Q43. Was it possible to hold a discussion in an orderly manner, and all persons participate in it? A. No; with the air raid going on, and anti-aircraft fire—there wasn't any anti-aircraft fire then, because we had already declared Manila an open city, but with the Japanese bombing, with the noise and confusion and the limited area, I am quite
sure that the discussion was just being carried on
Jt. 358 with one or two individuals at a time.

Q44. The reason I raised that question is this: Is it possible that some of these subjects that are indicated here may have been discussed with some of the individuals, and not with all of them? A. Yes. Our objective was to accelerate in every way possible the movement of the oil stocks from the installation; we wanted to resolve the difficulties of transportation, and we wanted to find out and dispatch more rail facilities; we wanted to find out whether there were any other oil stocks unknown to us, and which we could locate and secure or destroy.

Q45. I was thinking, specifically, for example, of something which is indicated in Paragraph No. 4 of this memorandum, which refers to lighters located at the Asiatic Petroleum Company. Of course, that would have been a

matter which you would have discussed with representatives of that Company, and not with others? A. That information undoubtedly came from the Asiatic Petroleum Company's representatives, because it is specific information and names three barges, and I probably got a note of that information from them, that these lighters were there, and they were reporting certain transportation facilities not used, and I made a note of it and reported they were going to be utilized in the movement of stocks to Bataan.

Jt. 359 Q46. Do you recall the name of any of the representatives of the Oil Companies? A. I recall Mr. Rock, of Standard-Vacuum, and the reason I recall him, he looked like Mr. Hogue, but I don't recall the names or what the other representatives look like. I think possibly I could identify Mr. Rock, I am not sure of that, but I think I could.

Q47. Let me direct your attention specifically to Paragraph 9 of this memorandum, in which you refer to a discussion of the possibility of the intermingling of the products in the tanks.

Do you recall that matter being discussed? A. Yes. We were primarily concerned with the destruction of these stocks. We appreciated that setting a general conflagration of such a large mass of oil stocks might endanger the whole city of Manila, and we were trying to make sure that we were not going to burn down Manila, with the tremendous loss of civilian property and life, and that possibility would be avoided, in case we could make an emulsion of this product, which would make it useless and avoid that danger, but I don't know with whom I discussed it; I know it was with some of the representatives, who knew more about it than I did, and it was the concensus of opinion

Jt. 360 with those with whom I talked, that the timing and location and additional piping and the time required made it unfeasible.

So we, therefore, planned on the destruction of this by demolition, and I don't know whether then or later, but we developed a plan and established the general timing, and insured, for example, that the area in the immediate vicinity of the Pandacan oil installation would be cleared. We arranged that to be done about an hour before the actual demolition, so that the people would not get all concerned and possibly resist this destruction, in the fear that a general fire might result.

We also mobilized the fire departments and constabulary, and had them ready, and had them standing there.

Q48. You made reference, a minute ago, to an undated letter. Is that the reference contained in Paragraph 12? A. Yes.

Q49. When you refer to that undated letter, are you referring to the letter which is marked "Defendant's Joint Exhibit 1," for identification? A. Yes.

Q50. That letter indicates that it was signed by General Marshall. Do you know that such a letter was, in fact, signed by General Marshall? A. I have a very
Jt. 361 strong recollection that it was.

Q51. Did you prepare it for his signature? A. I prepared it for his signature.

Q52. This one in front of you was addressed to Standard-Vacuum. Was the same exhibit prepared for the other companies? A. For all four companies.

Q53. And to the best of your recollection, were those letters signed by him and delivered to the Oil Companies? A. They were, to the best of my recollection.

Q54. Why did you have that letter prepared for General Marshall's signature?

Mr. Kissam: Just a minute. This I object to as being inconsistent, in the first place, with the letter, which he has identified as Joint Exhibit 1, inconsistent with the description in Paragraph 12.

Now, do you want to ask him to explain the inconsistency? I think it explains itself.

By Mr. Barnes:

Q55. May I ask you, General Casey, whether the letter, Defendant's Joint Exhibit 1, is, to the best of your recollection, the letter to which you are referring in Paragraph 12?

Mr. Kissam: I object to that, on the ground that he has already identified it.

Jt. 362 The Witness: This letter to which reference was made, the letter which refers to the destruction of the products, is what is contained in the letter, even though the reference in my memorandum, made up from pencil notes, is inaccurate, where it states there was a further undated letter to the effect that the plants and stocks were to be taken over by the Army. In preparing that memorandum, there was an inaccurate presentation of the exact content of the letter. The reference to the undated letter refers to this (indicating), even though it is inaccurately worded.

By Mr. Barnes:

Q56. Why did you prepare that letter for General Marshall's signature?

Mr. Connolly: The same objection, Your Honor, please, as the question calling for the purpose of the letter.

The Commissioner: The objection is overruled.

Mr. Connolly: An exception.

The Witness: I was Chief Engineer, and, as such, did not prepare or issue from our headquarters letters emanating from headquarters, but they were supposed to be signed by the Adjutant General.

Of course, we had no Adjutant General, and when I returned on December 25, as I say, we were taking hundreds of actions and we were taking very rapid action on many things.

Jt. 363 In order to get a document that, you might say, had the proper administrative authorization, I prepared this one for General Marshall's signature, who was Deputy Chief of Staff, and the Commander over there where it probably should have been prepared.

I mean a letter of this type should not normally require the signature of the Deputy Chief of Staff, but just the Adjutant, but we had no Adjutant then, and it was to give, primarily, the Standard-Vacuum Oil Company's representatives a document, which might be used as evidence against the Japanese, that they were not assisting in this demolition or this destruction, at the specific direction of the United States Army, to protect them, in the event of their capture, was the primary purpose of furnishing this authorization.

By Mr. Barnes:

Q57. And it was to take care of any possible deficiency in your authority to write the letter of December 25? A. Yes.

The Commissioner: What was that?

Mr. Barnes: The preparation of this letter for General Marshall's signature.

The Witness: He was the head of the Administrative Authority.

Mr. Barnes: Your Honor, I offer in evidence at
Jt. 364 this time, Defendant's Joint Exhibit 1 for identification.

The Commissioner: Is there objection?

Mr. Connolly: I would like to inquire, briefly, on that. It seems to me there is no proper foundation for it.

The Commissioner: Let me see it.

(Thereupon, the document was passed to the Commissioner.)

The Commissioner: What is the document you refer to?

Mr. Barnes: This is General Marshall's letter, which the witness has been talking about.

The Commissioner: Very well.

By Mr. Connolly:

Q58. I believe you testified, in answer to Mr. Barnes' question, General Casey, that it was your recollection that this document, or the original of it, had been signed by General Casey and delivered to the Oil Companies.

Did you have any participation in the delivery of such letter to the Oil Companies? A. It probably was referred back to me, and I undoubtedly made the subsequent delivery, although it might have gone out from General Marshall's office and through his little administrative group, which was one man, or so, and was delivered by them. I have no specific recollection of either delivering it, myself, or whether it was delivered from General Marshall's office.

Jt. 365 Q59. No present knowledge of how it was delivered, if it was delivered? A. No.

Q60. These initials in the upper right-hand corner of that copy, "R.C.S.," refer to what? A. I don't recall.

Q61. Will you look at Defendant's Joint Exhibit 3, the memorandum, as to which you have been asked some questions by Mr. Barnes? That has the same initials, "R.C.S." Those initials don't mean anything to you? A. No. I had a Filipino secretary, but I can't think of his name. Whether they are his initials, or the initials of the Filipino typist that was in our office, I don't know, but it is not the person dictating or preparing the document; it is the initials of whoever did the typing and took the dictation.

Mr. Connolly: If the Court please, I shall have to object to the admission of this document. All of the persons who have been interviewed with reference to—in connection with the Oil Companies—have no knowledge or information of having received such a document, and this witness, as he has testified, is not able to testify, through his personal testimony, that it was ever delivered, or that such a document was written and signed by General Marshall.

Jt. 366 Mr. Kissam: The same objection by Caltex.

Mr. Tumulty: The same objection by Tidewater.

The Commissioner: The objection is overruled, and the document is received.

(Said Marshall letter, marked "Defendant's Joint Exhibit 1," was admitted in evidence and made a part of this record.)

Mr. Barnes: And I should also like to offer in evidence, at this time, as Defendant's Joint Exhibit 7, a document, which has previously been marked for identification as Plaintiff's Joint Exhibit 5, being notes of the memorandum prepared by General Casey of the meeting held on December 28, 1941, with representatives of the Oil Companies.

The Commissioner: Off the record.

(Here followed discussion off the record.)

Mr. Connolly: No objection.

The Commissioner: So received.

(Notes by Casey of meeting held on 12/28/41, marked "Defendant's Joint Exhibit 7," was admitted in evidence and made a part of this record.)

By Mr. Barnes:

Q62. General Casey, going back to this meeting of December 28, 1941, with representatives of the Oil Companies, do you recall any statement or representation made by any of the Oil Companies attending that meeting, which indicated that any branch of the United Army, or
Jt. 367 United States Government, had theretofore requisitioned or taken possession of their property?

Mr. Connolly: I object to the question, the form of the question, as calling for a conclusion.

The Commissioner: Will you read the question?

(Thereupon, the reporter read the pending question.)

The Commissioner: What is your objection?

Mr. Connolly: Calling for a conclusion as to whether something they said at the meeting indicated so and so.

The Commissioner: Very well, change the form of the question.

By Mr. Barnes:

Q63. Do you recall any statement made by any representative of the Oil Companies, pertaining to any prior ac-

quisition of title to their property by the United States? A. I do not.

Q64. If any such statement had been made, do you think you would have remembered it? A. I should think I would, because I think it probably would have affected our subsequent operations.

Q65. Did you receive any information or advice, in your capacity as Chief Engineer of USAFFE, from anyone, to the effect that any branch of the Army, or of the United States Government, had taken possession of, or
Jt. 368 title to, the Oil Companies? A. I did not know of any branch having taken title to it. I do know that the Quartermaster Corps, which is charged with the securing of oil products, were issuing instructions and requisitioning and securing oil products from these various oil companies.

Q66. General Casey, do you recall any general orders, which were issued in Manila, at or shortly following the outbreak of the war, relating to giving receipts for property taken? A. Yes; I recall it was specifically directed that, on any taking of property by any element of the armed forces, receipts would be given, and payment would be made on receipts given.

Q67. Those were instructions that came to you from headquarters? A. Came from General MacArthur's headquarters.

Q68. Are those among the documents which you have recovered? A. I haven't located them.

Q69. Did you pass those orders on to your staff? A. Yes, sir; I know I gave specific instructions, for example, to the Department Engineer, Colonel Stickney, and particularly to the Engineer Depot Commander, Colonel
Jt. 369 Bonham, to the effect that that procedure would be followed in all property requisitions by the Engineers.

We were securing large quantities of lumber and generators and demolition supplies.

Q70. So far as Lieutenant Ramme is concerned, had you given him any instruction or order, with respect to the giving of receipts? A. We were concerned with finding out the rate of progress of shipments of products out of the installations, and we were getting from him reports on quantities that were out-loaded.

I don't recall having issued him any instruction, with

respect to giving receipts to anybody for installation or properties.

Q71. When was it that you ordered the destruction of the Pandacan Terminal properties? A. On December 31, 1941, at or about 5:00 o'clock, p. m.

Q72. I think you stated that, prior to that, you alerted the constabulary and Manila Fire Department; is that right? A. Yes, sir.

Q73. Where were you at the time the Terminal properties blew up? A. I think I was at my headquarters at 1 Calle Victoria. Many things were happening right then, in connection with Northern Luzon and Southern Luzon, in the clearing of forces through Manila and the destruction of McKinley Field and Nichols Field.

Jt. 370

I had a number of demolition parties that were on numerous missions throughout Manila.

Q74. Were you aware of the destruction, and did it make an explosion that you could hear? A. Very definitely, and a tremendous burst of fire.

Q75. Were you at Pandacan at any time after that? A. I didn't get to Pandacan after that. I got around through Manila, around the port areas, and I could see the great fire at the Pandacan installation. I didn't go over and check into it personally, inspect it personally.

Q76. General Casey, after you had returned to the Philippines in the early part of October, 1941, did you have occasion to become familiar with the so-called Orange Plan of the Philippine Department? A. Only generally so, inasmuch as the revision of this plan was under preparation by General MacArthur's headquarters, after General MacArthur had been called back to active duty and had activated the new headquarters.

Q77. You say the revision then was under preparation? A. Yes.

Jt. 371

By the Commissioner:

Q78. When was that? A. Well, it had been under way prior to my arrival in October, 1941, and was still being worked up to the outbreak of the war.

By Mr. Barnes:

Q79. That plan was never formally promulgated, that revised plan? A. No. Separate orders were made, and were based on activities as they occurred. After the landing at

Legon, for example, certain instructions were issued to the forces, which were not in conformity with the basic tactical concept of the so-called Orange Plan.

Q80. Do you recall what that plan was called, what its code name was? A. No.

Q81. If I suggested "Rainbow," would that refresh your recollection? A. It sounds vaguely similar to that.

Mr. Barnes: That is all.

Mr. Connolly: Will Your Honor give us a few minutes recess?

The Commissioner: Yes.

Jt. 372 (Thereupon a short recess was taken in the hearing.)

Cross Examination

By Mr. Connolly:

Q82. General Casey, at the time of your return to the Philippines, in October, I think you said, of 1941, was there, if you know, available in the Departmental Headquarters at Manila, a copy of the so-called Orange Plan? A. I am sure it was, although I never went down to get it and see it, but I am sure it was there.

Q83. What office would it have been in? A. It would probably have been with G-3. The Chief of Staff and the Commanding General would have access to it.

Q84. Now, I call your attention to Section 7 of that plan, or the copy of it which has been marked as Defendant's Exhibit 6, at page 17.

Is the reference to the preparation of the plans to be prepared, based upon the Philippine Department plan or Plan Orange and its annexes? A. I would say it is, yes.

Q85. Then there is a list of some 18 separate subsidiary plans to be prepared.

Now, do you know whether there was such a plan, or whether there was a subsidiary plan, prepared in conformity with Requirement No. 12, that there be an

Jt. 373 engineering plan by the Department Engineer? A. Yes; I recall an engineering plan prepared by the Department Engineer, who was then Colonel Stickney.

Q86. And do you know whether that plan, that engineering plan, was physically filed with the copy of the Orange Plan, itself, the basic plan? A. I am quite certain that it was filed with Division Headquarters, and submitted by the

Division Headquarters, and it would definitely be retained by the Department Engineer.

Q87. Now, I ask you specifically, of course, about the engineering plan, because presumably you would have the most occasion to be familiar with it.

Do you happen to know whether any of the plans referred to in that list of 18, were actually prepared by the departmental headquarters in Manila? A. Well, I assume they were. I know, for example, that the Department did have an air plan that was integrated with this basic strategic plan for defense.

Q88. That is subdivision No. 4, under that section? A. Yes.

Q89. Do you know whether there was also an Adjutant General's plan? A. I don't know. As I say, I presume, routinely, there would be. I have no personal
Jt. 374 knowledge of having seen an Adjutant General's plan, but I know that, from contacts with the Air Force, in connection with the Air Force's construction program, and also from contact with the Department Engineers, that they had their supplements.

Q90. In the course of your own duties, however, I take it that you were not required to familiarize yourself with the details of plans other than the engineering plan? A. And as I say, not with that, because this basic plan was then under revision, and the principal concentration was on the development of a new strategic plan to replace the so-called Orange Plan.

Q91. Now, in December, and specifically on December 7, 1941, after the outbreak of the war, where were you physically located? A. In Manila.

Q92. At your office that you previously identified as being on Victoria Street? A. As to the official notification of the outbreak of the war, I was in bed, and General Aikin, the Chief Signal Officer, waked me up about 3:00 A.M., and told me that Japan had attacked Pearl harbor and we were at war.

Q93. Will you trace, as nearly as you can, your movements between the outbreak of the war and the night of December 24, when you returned to Manila from
Jt. 375 North Luzon? A. I was in Manila practically all that time. I would make occasional trips to the North Luzon area and to the South Luzon area and to Bataan, in connection with the general engineering set-up, but I spent most of my time in Manila.

On this trip, for example, on the 24th, I think I left on the 23rd and got back the night of the 24th, on a short mission up to Central Luzon, incident to the preparation of one of the defense positions to which the Northern Luzon forces would ultimately withdraw.

Q94. There was a period of approximately 17 days, 16 or 17 days, between the outbreak of the war and the 24th of December.

About how many trips did you make out of Manila, during that period? A. Possibly 10 or 12.

Q95. Were most of them made in the space of one day, or more than one day? A. Less than one day.

Q96. During that entire period of time, I take it your activities were devoted largely, if not exclusively, to the work which you were doing in connection with the prospective demolition of properties, strategic properties and supplies? A. No; it was both construction and
Jt. 376 destruction. We were constructing air fields, we were establishing rear depots—or advance depots, but in the rear of the northernmost forces.

We were accelerating engineering supplies, we were requisitioning engineering supplies; and during the latter part of that period, we were preparing our positions on Bataan; we were building bridges that had been destroyed —reconstructing bridges that had been destroyed over certain streams, and also furnishing large quantities of demolitions to the North Luzon forces and the South Luzon forces, in connection with their withdrawal, and preparing certain bridges and communication facilities, in particular, for their use.

Q97. During that period of time, did you have anything to do with formulating or carrying out of the procurement programs by the Quartermaster? A. No.

Q98. During that period of time, and specifically on or about December 12, 1941, did you attend a meeting held at San Beda College, at which Colonel Drake and other representatives of the Army, talked to other representatives of the Oil Companies? A. No.

Q99. Did you ever attend any meeting attended by Colonel Drake, and representatives of the Oil Companies?
Jt. 377 A. I don't think so; none that I recall.

Q100. In answer to a question which Mr. Barnes put to you on direct examination, in which he asked you, in substance, whether at any time prior to December 25, you had received any advice from the Army sources, that any

branch of the Army had taken possession of, or title to, the Pandacan installation of the Oil Companies,—do you recall that question being put to you? A. Yes.

Q101. You answered, if I recall correctly, that, in so far as title was concerned, no, but that you had been advised of certain action taken by the Quartermaster Corps, with reference to the Pandacan installations; is that correct? A. Yes; I knew the Quartermaster Corps was securing oil stocks from the Pandacan installations.

Q102. In connection with that question that was put to you on direct examination by Mr. Barnes, was it your understanding that the word "title" related to the real estate at the Pandacan installations? Was that your understanding of the word "title," as used in Mr. Barnes' question to you? A. Well, it is the ownership of the facilities or real estate, or both.

Q103. Then were you advised, prior to December 25, 1941, that the Quartermaster Corps' representatives of
Jt. 378 the Army were actually in control, in possession and control of the Pandacan plant and facilities? A. Certainly not, officially, and I don't think I knew of it, as of general knowledge.

Q104. In other words, you, at the time you came back from Northern Luzon, on the occasion that you mentioned, did not have any personal knowledge, or official knowledge, with reference to what had been done by the Quartermaster Corps, up to that point; is that correct? A. That is correct, other than, as I say, I knew they were securing products, but under what procedure or arrangement, I had no knowledge.

Q105. You had general information that, somehow, or under the general arrangements, petroleum products were being taken out of the installation? A. Yes.

Q106. Now, you have testified on direct examination, also, as to the instructions you gave Lieutenant Ramey, at the time you sent him up to Pandacan, and I think you said December 26; is that the date? A. I think it was about the 26th. He was commissioned on the 25th, and I know that his first mission was the release of oil from these two Army controlled tanks in the port area, and having done that, he went to Pandacan. Whether it was the 26th or
Jt. 379 27th, I can't say for sure, but within a day or two of December 25th he went to Pandacan.

Q107. When you sent Lieutenant Ramme to Pandacan for that purpose, did you give him any instruction as to the date on which any destruction of property would take place?

A. I told him that the movement from Manila was imminent, and we wanted the preparations effected as rapidly as they could be effected, and I furnished him some of our mining personnel, demolition personnel, of whom we had quite a sizeable number assembled, to assist him; so that, with priorities on the release of demolition stocks and dynamite and caps and loaders, and the necessary means to prepare the installations for demolition.—

Q108. So that your instructions to him included the instruction to make those preparations as rapidly as possible, but did you then instruct him as to the date on which the demolition charges, which he was to prepare, would be set off? A. I don't know what date it was, but probably about December 28th or 29th. I know it was one or two days before December 31 that the decision was made as to the time when it was going to be done.

Q109. But you are clear, are you not, that at the time you sent Lieutenant Ramme up there, or gave him the
Jt. 380 initial instruction to go up, you didn't then also advise him that, on December 31, the demolition charges would be set off? A. I don't think the specific date was determined at that time, because it was contingent on the time that was going to be required for the South Luzon forces to clear Manila, which was anticipated would be a matter of a few days.

Q110. And of course it was contingent upon the progress of the war, as to whether it went according to your expectations, or otherwise? A. No; the decision of the withdrawal of the South Luzon forces had been made, as had been directed, and the South Luzon forces at that time were no longer holding the defense positions, nor was the North Luzon force; they were both moving back, by direction, to join and then ultimately to proceed and take positions in Bataan, which was a reversion back to the original Orange Plan, subject to changes in strength, etc.

Q111. But in any event, the date upon which the demolition was to take place was not communicated to Lieutenant Ramme until some time after Lieutenant Ramme had gone up to Pandacan, following your instruction; is that correct? A. Yes, the specific date.

Q112. The specific date, yes. And there did come a time, which, as I understand your testimony, you now
Jt. 381 place around December 28th or 29th, when you reached the decision as to when that date would be; is that correct? A. Yes.

Q113. How long after you reached that decision, did you communicate it to Lieutenant Ramme? A. I don't know whether it was that same day or the next day. It was in advance of December 31.

Q114. In other words, it is your recollection that, some time in advance of December 31, you communicated with Lieutenant Ramme and told him that, on December 31, you would again communicate to him and give him the order to demolish the property? A. I know that, after we received our instructions, after the movement of the North and South Luzon forces, but within several days prior to December 31, he knew that December 31 was going to be the key date, because instructions had to clear to the commands about clearing Manila.

We had a certain time, and I think it was about 10:00 o'clock on the night of December 31, that everything was to be cleared, and that, at 6:00 o'clock, A.M., on January 1, everything was to clear the Kalampus bridge across the Pasig River; and I had issued instructions some time prior to 31 December, to all of my demolition parties, to Lieutenant Buchanan, who was handling the power installations, and Lieutenant Detamore, but as to the time of this operation, I knew it—for example, I knew by December 31, but whether it was the 29th, or not, I don't know.

Jt. 382

Q115. Going back to the earlier period, that is to say before that date was known, or you had made that decision, and in your instructions to Lieutenant Ramme, did you give him any instruction as to the control of the plant and facilities at Pandacan, during the interval between his arriving at Pandacan, pursuant to your instructions, and such future date as might be determined by you for the destruction of the property? A. Yes; I told him that I wanted to get out as much products as it was possible or feasible to do, and let us not have any deficiency on account of the lack of time, or lack of labor, or lack of anything that would restrict our movement of petroleum products.

Q116. Now, the demolition program, which you spoke of, and on which you were then working, in so far as relating to the oil stocks,—was that limited to the oil stocks, or did it also encompass a program to destroy the storage facilities, as well? A. It was primarily to destroy the oil stocks, but incident to that, it was to destroy the facilities that might be utilized for the immediate replacement of stocks.

Jt. 383 We were concerned, I would say, with the destruction of the tanks, the destruction of the valves. I don't mean destroy everything in the area, but destroy those things that were vital to the operations.

Q117. In other words, to destroy anything that might have any value to the invading Japanese Army? A. Yes.

Q118. As a matter of fact, so far as the United States Army was concerned, apart from the storage facilities of the Oil Companies, themselves, the Army did not have any control of these storage facilities in that area, did it? A. Not in that area. We did have down at the port area.

Q119. What were the facilities that you had in the port area, or the Army had? A. They had some oil lines, they had two tanks, and they had several more in the moat around the walled city, which, as I say, was Lieutenant Ramme's first mission, the emptying of those facilities.

Q120. Do you recall the storage capacity in that facility? A. I don't recall it offhand, but probably 10,000 or 15,000-barrel tanks.

Q121. That facility was used, was it not, for fuel
Jt. 384 oil? A. For fuel oil.

Q122. And that was all that facility was operated for? A. The product there would have burned too rapidly, and which we thought should be released, because in that area we did not have very good pools around the tanks, and we were concerned about the problem of destroying it, other than just by slowly releasing it out into the harbor.

Q123. Prior to December 25, 1941, had there been reduced to writing, so far as you know, any plan or program for the demolition or destruction of the Oil Companies' plant and facilities? A. Not that I recall. The only information was in—the department engineer had previously assembled certain information on the number of bridges throughout Luzon, which had not been kept up to date.

Q124. In connection with your instructions to Lieutenant Ramme to take, or arrange to have taken, as much in the way of the quantities of oil products out of the installations as possible, did you give him any instruction as to what was to be done with those oil products that were taken out then? A. At that time, the forces that were operating, generally, had sufficient stocks with them to take care of their normal activities, and our great concern was to get the
Jt. 385 great bulk of these stocks over to Bataan by trucks, by barge, or by railroad, and the concern

we had was to get the maximum, but based on any revision of instructions or modified instructions we might get as to the items of critical need.

For example, I recall that Admiral Hart had issued instructions, I believe, to Standard-Vacuum, to destroy certain products of Diesel oil. I think he had issued those orders to all four companies, in fact, which indicates the confusion and lack of coordinated control that was going on.

Within two days, the Navy came in under higher priority and said that they needed this same type of product, and fortunately three of the companies had not destroyed or disposed of their particular product, and we were able to fill that order, but the priorities fluctuated, depending on what they thought their stocks were over on Battan, or what they anticipated the requirement was going to be between Av-Gas and motor gas and special types of Diesel oil; but I did generally indicate that we did want to get balanced stocks, not all motor gasoline and not all Av-Gas and not all lubricants and no gas, but based on such reports as occasionally were sent to us, that we got from Bataán or Corregidor, we varied our movements, but in so far as it could be done without seriously affecting the maximum out-shipping of products.

Q125. And in connection with those efforts to obtain the maximum output of products, to be transferred to Bataan. I take it that the petroleum products so shipped were to be made use of in connection with the Army activities there; is that correct? A. We hoped it would be, if it would ever get to Bataan. Some of it got caught in railroad jams, in the over-all movement.

Jt. 386

Q126. In other words, the efforts to get the oil stocks out of the facilities, at that time, did not have, as their ultimate objective, the destruction of those stocks that were taken out? A. No.

Q127. Now, you were asked, on direct examination, about your letter of December 25, 1941, which is Plaintiff's Joint Exhibit 3.

As I understand your testimony, that letter was written, as nearly as you can recall, now, on December 25; is that right? A. That is right.

Q128. And you gave instructions for its delivery, on that day, to the several Oil Companies therein referred to? A. Yes.

Q129. Had you had any conversation with any of the

representatives of the Oil Companies between your
Jt. 387 arrival in Manila on the evening of December 24, and the following day, when this letter was sent out? A. Not that I recall. I don't think I saw any of them, other than Lieutenant Ramme, who was then in the employ of the Standard-Vacuum, before he was taken into the Service, and I had a general discussion with him as to the situation, because he was concerned with it.

Q130. His meeting with you was in connection with his enlistment in the Army, at that time? A. Yes.

Q131. On that date, that is to say, December 25, 1941, who was your immediate superior in the Army? A. General Marshall.

Q132. General Marshall was also, as you testified before, the highest ranking officer? A. He was the commander of these elements of the echelon.

Q133. Do you recall whether you received any instructions from General Marshall, directly or indirectly, with reference to sending out this letter of December 25? A. I don't recall that I received any, outside of these instructions that I had gotten on the night of December 24, and transmitted through Major Gay, that instructions had been issued about the demolition of the oil stocks and
Jt. 388 radio stations. While it did mention some of the others, it seems that this was the important thing, and I recall specifically those two items that were stressed.

Q134. Do you know whether Colonel Drake—or perhaps he was General Drake at that moment—was in Manila, at that time? A. He was not.

Q135. Did you issue a similar letter to the radio stations that you referred to, as being the subject of the demolition program? A. I believe that I did, and also to these little different companies that were referred to in this memorandum of December 28, after we heard about them.

Q136. That is, the companies that were reported— A. The oil mill and cotton mill, but not Standard-Vacuum, which had already been covered, but any principal installation that we were going to destroy—I prepared a similar letter, and I think in almost the same general verbiage.

Q137. Now, that memorandum, a copy of which you are now looking at,—you placed, on your direct examination, the time of writing that memorandum, as I recall it, at some time within two weeks after the date of the
Jt. 389 meeting, December 28; is that correct? A. I am quite certain it would have been typed up about two weeks later.

Q138. Now, I wish you would tell me a little bit more about the details of the preparation of that memorandum. Do you know who typed it, physically? A. I don't know who typed it, and I don't recall "R.C.S.," as to whether it was one of our typists on Corregidor, who had been with our office in Manila, or just who it is. It is not my civilian secretary, because his name was Pimental, which begins with "P".

Q139. Let's see if we can get it by tracing some of your movements directly after that.

During the period from December 28th until December 31, I take it you were at Manila? A. During which period?

Q140. December 28th to December 31, which is when you gave the order to destroy the Pandacan installation. What did you do then? A. I remained in Manila, went through Manila,—about the last one to leave—picking up the remnants of our demolition forces.

About three or four o'clock A. M., on January 1, I proceeded to Bataan on a little boat that I had reserved for my final movements, and then after that I was in
Jt. 390 Corregidor from January 1 until about—I know I was there until after the 6th, because we had a very special operation there, and probably January 8th I proceeded to Bataan.

Q141. Now, does a review of those events help place in your mind when it was that this memorandum was typed? A. No. As I say, it could have been typed up on Corregidor, or it could have been typed within the following few days on Bataan. Probably it was typed up on Corregidor, with scratch notes and various and sundry papers that had not been reduced to typing, which I took with me; and these last little instructions on demolitions and operations and movements, which I had kept a record of, had gone with me to Corregidor, when I left Manila.

Q142. Is it your recollection that you dictated this memorandum, or you gave to somebody to copy the memorandum of pencil notes? A. By this lettering, "R,C.S.," up there, I would infer it was probably typed up from some pencil notes.

Q143. Were the pencil notes your notes, or someone else's notes? A. These were my notes.

Q144. Those were all your notes? A. Yes.

Q145. Now, when, with reference to the meeting
Jt. 391 of December 28, 1941, did you make the pencil notes which provided the basis for this typewrit-

ten copy? A. Probably some of them during the conference, for instance, the notation about the lighters or the list of facilities and oil stocks, that we had not covered.

Q146. Then these were written after the conference, were they? A. Yes, and I would probably write them up into over-all memos, and took off the memo in pencil, summarizing these little sketchy references.

Q147. In other words, it is your recollection that you started off with your miscellaneous notes, some of which you took after the conference, and you then sat down and, in pencil, wrote out the several numbered paragraphs that appear in this typewritten document; is that right? A. Yes.

Q148. Now, you have also told us, on direct examination, that Paragraph 12 of that memorandum, which states, in part, that they were furnished an undated letter, which was to take effect upon notice from headquarters, etc., you say that it is your recollection that that did not happen at the conference of December 28, but at some subsequent date; is that correct? A. This refers to the letter which was prepared for General Marshall's signature, Jt. 392 and I know that it was intended that this letter go to each one of those companies, and in our records, maybe, at the time—at the time this was compiled, that action had been consummated. I assume that, by that time, General Marshall had signed it, and this letter was dispatched, but I put in this notation in connection with the thing, and amplified it here; but I don't know whether they were furnished it right after the conference, but I think this was prepared, based on pencil notes that I had of the conference, and I was only summarizing on one piece of paper the general action that was taken as an incident of this conference.

Q149. In any event, you are saying, I take it, that at the time you made the notation here, which is now Paragraph 12, that the document to which you had reference had already been written and was in existence? A. Yes; the document, I know, had been typed,—I mean I think probably after the conference, or prior to the conference, —I don't know, but I know that all of the action in connection with having it submitted, or taking it up with General Marshall and having him sign it, and so on,—whatever form of delivery was taken, whether it was through his office, or through my office,—that those things I had assumed had been consummated, at the time I wrote it.

Q150. You have pointed out on your direct ex-
Jt. 393 amination that the concluding portion of Paragraph 12, which reads, "to the effect that their plants and stocks would be taken over by the Army,"—you have pointed out, on your direct examination, that that language is not appropriately designed to describe the letter, which you now identify as the letter referred to, being Defendant's Joint Exhibit No. 1 for identification, in evidence.

Now, can you explain for us why the inscription in the memorandum, which you have prepared in the manner you have testified to, differs from the letter which you say was referred to in that Paragraph 12? A. One thing: I probably did not use this letter, or a copy of it, and put the exact wording here. When I wrote this up (indicating), I wrote this as an undated letter, and having known of this other one that I had previously furnished, I probably just wrote in it that it was to the effect that the plants and stocks were taken over by the Army, but it was probably written up without specific reference to this (indicating); and as I say, you would have to understand the conditions under which we were operating, and it is a remarkable thing, I think, that we were able to make that much of a record, under the tremendous amount of confusion and the tremendous amount of activities.

Q. 151. I can fully understand. A. The only
Jt. 394 thing that I can guarantee will be the correctness of the lists and the statements of these oil companies, because I have written those down on a piece of paper, because this is the critical information here I wanted to get in.

Now, the only fact that I know, definitely, here is, they were furnished an undated letter pertaining to the general problem of taking over or the destruction of their oil stocks.

Q152. I did not mean to suggest, in my question, any criticism, General Casey. I recognize that it was— A. I am trying to explain the difference between my memorandum, which says one thing, and the reference to the letter, and the substance of it, varying from what I say the contents of this undated letter was.

Q153. Tell me, how did the question of this undated letter, that you refer to, come up between you and the Oil Companies; did anybody at your conference of December 28 say that they wanted to have that kind of letter? A. I

don't recall that the question came up at the conference. I don't know whether it was because of either some discussion with Ramme, when he came back from the plant, and talked to me about how he was progressing, and whether or not he was encountering difficulty or fear on the part of the Oil Companies' group, of taking part in this
Jt. 395. mass demolition, and knowing that the personnel was going to remain there and the japanese forces were going to come on in; but I do know that, as a result, probably, of the discussion with him, that I made up that memorandum, and as I see it, that letter was just simply signed by myself, just as engineer and not, you might say, as the authorized administrative official of headquarters, in order to get additional confirmation and something else signed by General Marshall, who was the Commander of the rear echelon, which could be used for the protection of the personnel. It was the basic purpose, as I recall it, at that time, of supplementing my form of letter, which was checked off to the four different Companies.

Q154. It was entirely your own idea, so far as supplementing the other letter was concerned; no request from the owners? A. Not that I recall.

Q155. And so far as you know, none of the Oil Company representatives, at the meeting of December 28, expressed any dissatisfaction about your letter of December 25? A. No; other than that we discussed—as I say, we had a handful of personnel at each one of these major plants, and I was pointing out to them that we anticipated the full assistance and cooperation of the Oil Companies, and insisted on the demolition program; and insisted on
Jt. 396 the preparation and actual taking part in it.

I know there were varying degrees of fear, and absolute opposition expressed by certain representatives.

Q156. Recognizing the problems of confusion, at or about that time, I would like to ask you a few more questions about this letter, that is to say, the document which you have described as the proposed letter from General Marshall, undated, and so on.

Now, it is a fact, is it not, that at or about the time of the conference of December 28, representatives of the Oil Companies expressed some unwillingness, themselves, to engage in any actions of demolition and destruction; do you recall that? A. Yes.

Q157. Dont you recall, also, that at that meeting, you

told them, ultimately,—this is in substance, of course—"You need not concern yourself with that, because we will see to it that the Army will do the actual acts of demolition by the use of such and such of your personnel as we want to use"; is that right? A. Yes.

Q158. And don't you also recall that it was on that basis that the matter was left as being satisfactory to the Oil Company people; in other words, that they were
Jt. 397 not required to take any action, themselves, toward the demolition, but the demolition would be done by the Army, so there would be no question about what would happen to them subsequently; is that right? A. Yes.

Q159. Doesn't that review bring to your recollection, and refresh your recollection to the point that you can now tell us that this document, the proposed General Marshall letter, was something which had been written previous to the meeting, and was thought to be unsatisfactory, because it provided that the oil men are directed to destroy all petroleum products and stations and vital parts of the plants? A. I want to follow a definite, logical course, in order to try to retrace and recall to mind whether or not that had so happened.

As I recall it, I took it up with General Marshall, and had discussed it with him, and had not signed it, and it is my recollection that it was so sent out and, as I say, it is reinforced more by the notes I have and memorandum of this conference, or what notes I prepared after that conference, that I rely on a little more so than trying to recall what the incidents were at this late date.

Q160. I am sure you will not mind, if we try together to find what the actual facts were.

Jt. 398 So far as your memorandum of the conference of December 28 is concerned, you will agree, will you not, it is a little unsatisfactory, because what you say in Paragraph 12 of that memorandum does not describe accurately this letter of General Marshall; correct? A. Yes.

Q161. Now, you have also told us that, so far as the delivery of the Marshall letter is concerned,—that is, I keep referring to the Marshall letter, but I mean this exhibit— A. This undated letter here (indicating).

Q162. So far as the delivery of that letter is concerned, you have already told us that you had no personal knowledge of the circumstances of delivery; that your recollec-

tion was limited to the fact that you thought you had General Marshall sign that letter; correct? A. Yes.

Q163. Now, you recognize, do you not, that the language of that so-called Marshall letter was not the kind of language that the Oil Companies said that they would like to have at your December 28th meeting, and that the language of this proposed Marshall letter did not meet their objections to having the Oil Company representatives, themselves, do any demolition? You recognize that, don't you?

A. Yes.

Jt. 399. Q164. Now, having all those facts in mind, also the fact that, on December 28, you had a conference with the Oil Company representatives, at which that problem was discussed, doesn't that suggest to you, at least, the possibility that this letter, prepared for General Marshall's signature, was prepared with the idea of having it delivered to the Oil Companies, and was signed by General Marshall with that idea, but when you found the precise letter in that file, in that situation, you decided that it would not do the job satisfactorily and, therefore, did not actually deliver that letter? A. That might be, but as I say, as I recall it, this was prepared—I recall that it was prepared, and I feel, signed, prior to that conference and, therefore, the feeling of the Oil Company people at the conference would not influence the preparation of it in the form in which it was prepared.

Q165. That would explain— A. Whether that affected them subsequently, that is, whether any action was taken to stop it, or hold it, I have no recollection.

My recollection is that that letter had been so prepared, and had been so signed and, as I thought, delivered; whether or not furnished to them at the conference, or sent later, I have no recollection, and whether or not some

Jt. 400 action was taken to stop it, subsequently, and delivery was never made, I also don't recall; but I do feel that, if such action had been taken, I would not have contained this statement in this transcript of the meeting and whatever pencil notes were written about it.

Q166. Let me suggest to you another possibility in connection with that paragraph 12: Is it not possible that the letter written by you to the four companies and dated December 25, that is, bearing date of December 25, may not actually have been written at a date later than December 25? A. I am quite certain that that letter, of which it is a photostatic copy, which I did not have, but which I find

here, but which shows my signature and the date of December 25, was actually signed and prepared on December 25, and its timing I think is consistent with the date of my return, and the urgency of this specific problem expressed to them, I feel quite certain that this letter was definitely prepared and signed on the date indicated.

Q167. Although, up to that time, you had not had any indication from—up to that time, you had not had any conversations with the representatives of the Oil Companies, other than your interview with Lieutenant Ramme, who came in to enlist? A. That's right.

Jt. 401 Q168. Incidentally, do you recall whether you dictated this letter entirely by yourself, that is, this letter of December 25? A. I can be sure I did.

Q169. Do you have any recollection of Lieutenant Ramme participating in the preparation of that letter? A. I don't recall that he had anything to do with it.

Q170. Would you say that he did not have anything to do with it? A. I do not recall that he had anything to do with it.

Q171. And Paragraph 12 of the December 28 conference memorandum is an appropriate description, is it not, of the letter, dated December 25, apart from the fact that that letter bears date of December 25? A. Yes.

The Commissioner: Off the record.

(Here followed discussion off the record.)

The Commissioner: We will recess until 10:00 o'clock tomorrow morning.

(Thereupon, a recess was taken in the hearing until 10 o'clock a. m., Wednesday, November 30, 1949.)

Jt. 403 • • • • •

Cross-Examination (Resumed)

By Mr. Kissam:

Q172. General Casey, how long have you been in the United States, since your last tour of duty in the
Jt. 404 Far East? A. Since August 3, except I left shortly after that, on the 23rd, for Europe, and returned on November 3, I believe.

Q173. You are now permanently stationed in Ohio? A. Yes.

Q174. In 1941, at what time did you leave Manila; that is, the last time you were there? A. March 12, 1942. You are talking about during the war?

Q175. Yes, I am talking about 1941. Now, in your testimony, yesterday, you said you were there in January 1, 1942. A. I was asked when I left Corregidor, and I said I knew I was there during January 6, and it was a few days after that, because there was an incident on January 6 which is very definitely fixed in my mind.

Q176. Your last day in Manila, prior to going to Corregidor, was what date? A. On the morning of January 1, about 3:00 o'clock or 3:30 in the morning.

Q177. Then from Corregidor, where did you go? A. To Bataan.

Q178. And from Bataan? A. To Farmosa, and then to Australia with General MacArthur, in March, 1942.

Jt. 405

Q179. At the time General MacArthur left the Philippines to go to Australia, you accompanied him? A. Yes.

Q180. In what capacity? A. As Chief Engineer.

Q181. How did you happen to come here, yesterday, to testify? A. How did I?

Q182. How did you happen to come here, yesterday, to testify? A. By letter orders, which I received from the Adjutant General, Department of the Army.

Q183. Have you been subpoenaed? A. No, sir.

Q184. Were you directed to search for any records, prior to coming here? A. I wasn't directed to search for any records prior to coming here, no.

The records which have been submitted heretofore were submitted by me in response to a request from AFWESPAC Claims Service, which was investigating a number of claims of varying natures incident to the Philippines.

Q185. What date were the papers that were submitted here—precisely, what papers do you mean?

Jt. 406

A. I am referring to, I think, that memorandum of this conference, that undated letter, so-called, my letter of December 25, and certain other little items that pertain to the oil stocks account. I went through my files and picked out—

Q186. So there won't be any confusion, I will show you what has been submitted here, to see if that covers all that you are including. A. Yes, that I furnished.

Q187. Suppose you refer to them by exhibit number. That is Plaintiffs' Exhibit 3, the letter of December 4,

1941, addressed to the four companies. A. I didn't submit this one (indicating), that shows my signed signature. I submitted a copy of this same letter. So I submitted this (indicating), but not the photostatic copy or signed copy of my letter.

Q188. But you submitted a copy of it? A. The copy that has exactly that on it, except the signature.

Q189. And what else? A. This (indicating).

Q190. This has been marked what, now? Plaintiffs' Exhibit 4, which is a summary of notes; is that cor-
Jt. 407 rect? A. Yes, summary of notes.

Q191. And then, of course, I assume you submitted what is now marked "Defendant's Exhibit 7", in evidence, which is the memorandum relating to the meeting held on December 27, 1941. A. Yes.

Q192. And then is the only other paper that you submitted a copy of the so-called General Marshall letter, which is undated, which is now Defendant's Exhibit 1? A. No, I submitted other papers, too.

Q193. Will you tell me what other papers you submitted? A. I don't recall specifically, but I went through our recovered files, and anything that pertained to the oil stock situation, with respect to any of these companies, I extracted a copy of that and forwarded it, but those (indicating)—

Mr. Barnes: I will be glad to make available to you the complete file of documents that General Casey identified. I have not introduced the others, which have no bearing on this, but if there is any question of concealment by the Government, I will be glad to give them to you.

Mr. Kissam: May I have a moment to look at these, Your Honor, not having seen them before?

The Commissioner: How much time do you want?

Jt. 408 Mr. Kissam: Two or three minutes.

The Commissioner: Very well.

Mr. Kissam: I thank you for the opportunity of looking through these papers.

By Mr. Kissam:

Q194. General Casey, getting back now to the notes that you made, indicated by Exhibit 4 for identification, which is the one captioned "Extracts from Notes on Conference and Telephone Conversations"; and Defendant's Exhibit 7, which is captioned, "Conference with representatives of

four oil companies," do I understand, from your testimony, given in response to Mr. Connolly's questions of yesterday, that you had the practice of making notes during the progress of a meeting on, I suppose, whatever pieces of paper happened to be handy, from which you would later dictate or write out more fully what happened at the meeting; is that correct? A. Yes.

Q195. That was your customary method of recording what transpired at a meeting? A. It depended. When the situation was moving very fast, it was a 24-hour situation at this time, and being on the telephone, and jotting down some notes, or at a conference, and jotting down some notes at the critical point. There was never time, during this period, to write a careful, long, de-

Jt. 409 tailed account of a hearing.

Q196. I understand that. A. And when time permitted, we would try to make these reference notes, key notes, more legible, because we wanted to get the contents out, when they were understandable.

Q197. Yes, I can understand that perfectly. What I am getting at is this: In spite of the stress of the circumstances, which I appreciate must have been very grave, you did, nevertheless, make certain notes at the time a meeting was in progress; is that correct? A. Yes.

Q198. When I say "meeting," I am referring to the meeting of December 28, which was held in your headquarters, and later removed to the air raid shelter which you described yesterday. A. Yes; if it was the 28th, or if it was the 27th, because I have two things that conflict here:

"On 12/27, further conference with Mr. Rock and Lieutenant Ramme."

I recall the first time I met Rock was at the conference.

Q199. Which exhibit are you referring to now? A. Your No. 4 for identification.

Q200. Now, the first time that you met Mr.

Jt. 410 Rock, you are sure, was at the meeting in General Marshall's office, or wherever it was in your headquarters, and you went down to the air raid shelter? Whatever day you met him, that was when you met him for the first time? A. I think so. I don't know whether he came after Ramme's commission, but anyhow, he came over and we discusesd a certain situation and, as a result, I called this conference—or whether it is a special discussion with Mr. Rock, after this general discussion.

Q201. Referring to your memorandum, which is Defendant's Exhibit 7 in evidence, the one consisting of some 13 paragraphs, is your recollection refreshed by reading that memorandum as to what transpired at the meeting to which it relates? A. Well, what are you referring to by your question?

I mean, as indicated in the testimony previously, the purpose of this meeting was (1) to determine what could be done to accelerate shipping, to determine what the oil stocks were; and (2) to discuss means and methods, and notifying them of the definite plan that we were proposing to complete the destruction of these plants.

Q202. My question meant simply this: Do you have an independent recollection of the meeting, and what happened, or is your recollection presently dependent upon the notes before you, namely, Defendant's Exhibit 7? Do I make the question clear? A. I have both. I have a definite recollection of the meeting, of the discussions had, which is refreshed in detail by this memorandum, and specifically, for example, the designation of the lighters that were lying unemptied, and a listing of the firms that indicated additional oil stocks were available, which were over and above those of the four oil companies.

Jt. 411

Q203. As I gather it, two things are present: (1) You have an independent recollection of the meaning, but as to the details of the meeting, for example, as you pointed out, the names of the lighters, your recollection is refreshed from notes which you took at the meeting? A. That's right.

Q204. Is that right? A. That's right.

Q205. And as between your independent recollection and the notes, I assume the notes, having been written at the time of the meeting, if there was a difference, you would rely on your notes; is that correct? A. Yes; as far as the general content is concerned.

Q206. The notes were written right at the time these events were transpiring? A. The pencil notes were, from which this summary was later prepared. My purpose was to cover in a paper the general information presented, and, what is more important, whatever action we could have consummated from that.

Jt. 412

That is the reason, for example, for leaving in this little note, where it was reported that the electric current was off, and we had contacted the Manila Electric Company,

we have a little note that that item was taken care of the next day.

Q207. When you made these notes of the meeting, which I assume is based on what was happening, it is an accurate notation of the event; isn't that correct? A. In so far as it was feasible to do so. I probably just put down the key words.

Q208. Yes. I am not talking about the details. You wrote enough, so that when you wrote something up more fully, it would be enough of a reminder to you to write it out in detail? A. Yes; under the pressure of time under which this other was being done, too.

Q209. And I assume that, when you wrote up Defendant's Exhibit 7, the typewritten memorandum of the meeting of December 28, 1941, you wrote it up accurately from these little notes which you made during the
Jt. 413 course of the meeting, itself; is that right? A. In so far as I could, yes.

Q210. Now, getting on to the letter of December 25, which I think is Exhibit 3, Plaintiffs' Exhibit 3, this letter signed by you on December 25, in which you say in the first paragraph:

"Effective immediately, all petroleum stocks, storage and handling facilities, etc., at your Manila and Pandacan depots are requisitioned by the United States Army,"—now, attracting your attention to that, and attracting your attention to the twelfth paragraph of Defendant's Exhibit 7, which you now agree you wrote when the events were fresh in your mind and which you accurately transcribed, will you agree with me that Paragraph 12 of Defendant's Exhibit 7 conforms precisely with the paragraph which I have just read into the record from Exhibit 3? A. You know, that same question was asked, yesterday, and I indicated that it does not agree, and my interpretation of that is as I explained yesterday: I probably had a little pencil note about the undated letter, and what I do confirm now is that this reference about furnishing the undated letter refers not to this letter that I signed, where we requisitioned the plant, which is what the statement in Paragraph 12 indicates, that they were furnished an
Jt. 414 undated letter of requisition,—I am not referring to that in this comment (indicating).

Q211. I am not asking you—

Mr. Barnes: May it please the Court, it seems to me

that we have got a difficult enough situation here, with several counsel, but I do not think we should be allowed to have repetitious cross-examination, with succeeding counsel covering exactly the same subject, and I object to this line of cross-examination.

Mr. Kissam: Well, the record as made by Mr. Connolly was not a part of the joint record in the Caltex case—I assume that it all relates to that—but I do not regard it to be repetitious to have it generally demonstrated that, when he wrote these notes, he wrote them when they were fresh in his mind, which, so far as I know, has not been presented before in the testimony, and when he wrote the notes, he transcribed them accurately; and I am now demonstrating that, as between his present recollection and the notes, and demonstrating the likelihood of what he wrote at the time the events transpired is more accurate. If that has been developed, I have not heard it.

The Commissioner: All right, the objection is overruled.

Mr. Barnes: An exception, please.

Mr. Kissam: May we have the last question, please?

Jt. 415 (Thereupon, the reporter read the pending question.)

The Witness: The answer is "No."

Mr. Kissam: Now, both writings are in evidence, so the Commissioner can form his own conclusion as to whether they are in literal agreement.

By Mr. Kissam:

Q212. I ask you this, General: You testified, yesterday, that having written Exhibit 3, the letter of December 25, in which you said, unequivocally, that the Army was taking over the supplies and facilities of the Oil Companies at Pandacan,—that you felt that that letter was inadequate and, therefore, the undated letter of General Marshall was prepared, so that there could be no Japanese vengeance on the theory that the properties of the Oil Companies were destroyed by civilians, as distinguished from the military?

Is that a correct summary of what you said? A. Generally, yes.

Q213. Now, I will ask you this: I will ask you to look at Exhibit 1, which is the so-called undated Marshall letter,—do you have that before you? A. I do.

Q214. Now, you were interested in procuring the undated Marshall letter for the purpose of protection of the civilian employees and executives of the Oil Companies, Jt. 416 in the event they were charged by the Japs with demolishing the properties; is that correct? A. It was to show the full cooperation of those Oil Companies in this destruction, which was going to require the assistance of large numbers of workers in the oil plants, as well as the limited crew that I could put on that destruction program.

Q215. This is what I have in mind: I ask you how you could feel that this letter, the undated letter of General Marshall, in which the Oil Companies were directed to destroy the properties, was greater protection to them than the letter of December 25, in which you told them that that destruction would be effected by the Army? A. Because there was a directive from the Army headquarters, and when I used the phrase, "under the authority vested in these headquarters, under the present war conditions, you are hereby directed," which invoked the authority of martial law, directing them to comply with the specific directive from our headquarters, which I felt was the better method of securing absolute compliance by the personnel of all four properties, including the particular one that seemed a little more reluctant than the others.

Q216. You felt it was better—having already given them a letter, saying that, if there was any demolition, Jt. 417 the Army would do it—it was better, instead of that, to tell them, "You go ahead and do it, yourself, by your own authority"; is that what you felt? A. It was still planned—

Q217. Excuse me. Couldn't you answer the question? A. Will you repeat the question?

(Thereupon, the reporter again read the pending question.)

(Whereupon, Mr. Kissam asked his personal reporter to read the pending question.)

Mr. Barnes: I object to that, Your Honor.

Mr. Kissam: I have a right to have something read to me by the first reporter, I think.

Mr. Barnes: The court reporter had read the question. I do not know why Mr. Kissam had to have somebody else to read the question.

The Commissioner: Mr. Kissam, you made the request to the first reporter. I will permit you to have him read you the question and do your own checking.

Mr. Kissam: That is right.

The Commissioner: But when this particular record is filed, there will be no challenge from your personal reporter. I want that understood right now.

By Mr. Kissam:

Jt. 418 Q218. Do you understand the question, General?

Would you like to have the question repeated? A. I prefer the question repeated in a little more intelligible way.

Q219. We will do the best possible.

(Thereupon, the reporter again read the pending question.)

A. I felt it was necessary to give this letter, to insure their full compliance with the execution of this demolition, even though I knew, at that time, that the Army, itself, was going to do it; Lieutenant Ramme was charged with the destruction.

Q220. May I ask if you were concerned about the authorization of your letter of December 25, Exhibit 3? A. There was one concern, and that was—

Q221. May I ask, then, why you didn't have the same letter sent out over the signature of the Adjutant for General Marshall, or whoever the commanding officer was? A. I don't know any reason why I did, or why I did not.

Q222. You were attempting to convey the same information, but merely wanted to give it any form that, in your opinion, was proper authority from the Army's
Jt. 419 point of view; is that it? A. That is one reason.

Q223. I assume that, in the stress of circumstances, that you indicated in your testimony, in existence during the latter part of December, 1941, a good many things were done without complete Army formality, with respect to sending this out over the signature of the Adjutant, and so on? A. Yes.

Q224. Wasn't that either by agreement, or by custom, at that time?

I withdraw that.

Isn't it a fact that, either by authority, or by custom,

various officers were doing things which were not in strict conformity with the formal method of obtaining the Commander's signature, but were done under the best means available under the circumstances? A. Definitely.

Q225. And your letter of December 25, Exhibit 3, is an instance of such situation? A. It is.

Q226. Now, as I understand it, your testimony, yesterday, was that the letter, the undated letter, which we have called the General Marshall undated letter, Exhibit 1, was delivered, I believe you said you thought—I don't think you said with certainty, but I think you expressed the
Jt. 420 belief that it was delivered at the meeting held in your headquarters on December 28, 1941; isn't that correct? A. That is not correct. I did not know, as I indicated in my testimony, when that letter was delivered. As I said, I do not recall whether it had been prepared and was awaiting General Marshall's signature, or whether I subsequently got it signed from him, signed and delivered; that I didn't know whether his office delivered it, or whether mine did.

I testified that I did know that this undated letter had been signed and had been delivered, and this undated letter, whose principal identification is that it is referred to in Paragraph 12, irrespective of the fact that the content of this letter differs a little, but I indicated the content of the so-called undated letter. That undated letter is this (indicating) letter.

Q227. When do you think the so-called undated letter was prepared? A. I would say I had prepared it prior to the conference. I may have prepared it after, or as a result of a discussion that came up at the conference, when some opposition was divulged.

Q228. The date of delivery, then, would be December 28, 1942, or subsequent? A. I don't know.

Jt. 421 Q229. I thought you said, just now, that you might have prepared it as a result of the conference. A. I said I might have.

Q230. Or during the conference. A. I say it may have been prepared prior to the conference; it may have been prepared as a result of the feelings that were developed at that conference, in connection with the reaction of the individuals; and for that reason, it might have been prepared to give them specific directions that they would do so and so.

Q231. When did you first give Lieutenant Ramme orders relating to the demolition of the Pandacan Terminal? A.

Practically the first day he was engaged, December 25, and certainly by the 26th; I think, the 25th.

Q232. Will you agree that Lieutenant Ramme had received his instructions, or orders, rather, from you, at a time prior to the drafting of Exhibit 1, the General Marshall undated letter? A. Definitely.

Q233. Did you dictate your General Marshall undated letter; do you recollect? A. I either dictated it or wrote it; I prepared it.

Q234. It is your construction? A. Yes, including the notation.

Jt. 422

Q235. At the time you prepared it, in fact, you had already given orders that the terminals, if destroyed, would be destroyed through Army personnel, namely, under the supervision of Lieutenant Ramme; isn't that correct? A. Yes.

Q236. And you reconcile that circumstance with the text of the Marshall letter? A. Yes, and—

Q237. That is all I asked, General.

Now, you testified, yesterday,—Mr. Barnes asked you the question if it wasn't instructed or ordered that receipts be given for certain properties taken by Army personnel? I believe you testified that there was such an order, and that the Engineer officer had been instructed to give such receipts; is that correct? A. Yes.

Q238. Whose order was that, General? A. It emanated from General MacArthur's headquarters. I am sure that General Marshall was present there as Deputy Chief of Staff and either prepared or was concerned with the preparation and dissemination of those instructions.

General MacArthur had specifically ordered that the Army would not simply requisition things in the prosecution of the war effort, without giving adequate papers or receipts.

Jt. 423

Q239. And that was in writing? A. Yes.

Q240. Now, I assume, that after you talked with Lieutenant Ramme and arranged for his commission, that in the limited time you had, you acquainted him with the existence of such order; is that correct? A. I don't recall that I did, or did not. The situation on December 25, and during that week of Christmas and New Years, was quite different from the situation prior to that; and at that time, it was a matter of preparations for the evacuation of Manila and the destruction of property that was going to fall into the enemy's hands.

Q241. General, I don't want to interrupt your answer, except that it is not an answer to my question. My question was: Do you know whether or not you advised Lieutenant Ramme about this order you speak about, in the matter of the giving of receipts? What is your recollection on that? A. My recollection is that I did not. I might have, but I do not recall it.

Q242. What fact is it that impels you to say that you did not, in contrast to thinking perhaps you did? Is there something that stays in your mind about it? A.
Jt. 424 I have no recollection, at all, of having so told him. As I say, if I did, I do not recall it. My recollection is that, under the pressure of time, I probably would not have told him.

Q243. You were aware, yourself, of the existence of that order, were you not? A. Yes.

Q244. Will you agree that it is possible that you did instruct him to give a receipt, in the event that he took some property, or thought he was taking property? A. It is possible, but under the limited circumstances, I think, the limited time that I had with him was spent on more essential instructions.

Q245. Do you happen to know, in fact, whether Lieutenant Ramme, over his signature as a First Lieutenant in the Engineer Corps, gave a receipt, which related to the stocks and facilities at Pandacan? I just want to know if you know that, or not. A. I didn't know it at the time; he didn't report so to me, but I have seen certain testimony, in which I saw that he had so indicated.

Q246. In other words— A. But as of that time, I didn't know that Lieutenant Ramme had given any spe-
Jt. 425 cific receipts to anybody for property or facilities.

Q247. How soon after the demolition of Pandacan did you next see Lieutenant Ramme? A. I don't think I saw him again until I arrived on Bataan, which was some few days later. I may have seen him at Corregidor on the 2nd or 3rd, but my specific recollection is of seeing him on Bataan, probably the second week of January.

Q248. What was General Sutherland's capacity in December of 1941 in the Philippines? A. He was Chief of Staff, Headquarters, USAFFE.

Q249. As I understand it, until USAFFE was formed some time in July, the officer in command of the entire Philippines operations was then Major General Grunert? A. That is correct.

Q250. Then when USAFFE was formed, General Grunert continued to head up what is known as the Philippine Department, but under General MacArthur; is that correct? A. Except that he left shortly thereafter.

Q251. During the period of time he was there? A. Yes, sir.

Q252. Do you have any knowledge of a directive stated to have been given by General Richard Sutherland, at the direction of General MacArthur, to General
Jt. 426 Drake, to call a meeting of the commercial oil companies? A. No, sir.

Q253. And I gather from your testimony of yesterday, that, in that meeting held between General Drake, or General Drake's staff with the commercial oil companies,—that you personally were not present at any such meeting? A. I was not.

Q254. General, do you know what the defense of the Government is in this case?

Mr. Barnes: I object to that as being completely immaterial, Your Honor.

The Commissioner: Objection sustained.

By Mr. Kissam:

Q255. What I am getting at, General, is this: You do know that the Government is trying to prove, don't you, that the Army did not take the facilities, they just took certain of the stocks and temporary use of the facilities? You understand that, don't you?

Mr. Barnes: I object to that as being immaterial.

The Commissioner: Objection sustained.

Mr. Kissam: Well, Your Honor, I think I am entitled to show—we have a witness here, whose own notes, written at the time of the event, conflicts with his present testimony, and I think I am entitled to show he has a
Jt. 427 thorough comprehension of the position of the Government and, to that extent, may have the Government's interests at heart, as distinguished from the interest of the Petitioners.

I think I am entitled to show he has complete comprehension of what the Government is getting at, because his testimony is in conformity with the Government's position. I think I am entitled to demonstrate that.

The Commissioner: Yes; if you can do it by proper questions, but your present questions are arguing with him.

Mr. Kissam: I beg your pardon. I am asking him if he is familiar with the defense, as I remember the question. I will put the question another way.

By Mr. Kissam:

Q256. General, prior to coming here to testify, were you interviewed by any representatives of the Government, in anticipation of your testimony? A. I had an interview with Mr. Barnes.

Q257. In Washington? A. In Washington.

Q258. Was that immediately prior to your testimony, yesterday? A. I reported in here Monday, and reported over to his office.

Q259. Prior to that interview by anyone? A.
Jt. 428 Not in connection with this case. As I said before, on numerous occasions, there has been correspondence from AFWESPAC Claims Service, in connection with the claims of individual oil companies, or various and sundry installations, and as I have gone through my files and found any information pertaining to it, I sent it down to AFWESPAC.

Q260. Did you have any telephonic interviews by anyone, prior to— A. I did not.

Q261. Did Mr. Barnes outline to you what the oil companies were trying to prove in these cases, and what the Government was trying to prove? A. I wouldn't say that he outlined what the oil companies were trying to prove in these cases, or what the Government was trying to prove. I got, from the general discussion, an idea as to what the case is about.

I have not seen the claims; I have not seen much in detail of the relative positions of the Plaintiffs or the Government, except I understand, generally, that the plaintiffs are seeking reimbursement for properties or stocks that were taken by the United States Government; and if I may amplify on that, that is a position I cannot understand, because I know the Plaintiffs occupied these properties since; and my experiences out in the Far
Jt. 429 East, where I have to do with real estate, I do not recall any action on the part of the Oil Companies to secure that land back from the Government.

Q262. And you know, of course, that if your letter of December 25, 1941, was permitted to stand, without explanation, it is a complete confirmation and corroboration of the

disposition of the Oil Companies as to the taking of their properties, do you not?

Mr. Barnes: I object to that question, Your Honor.

The Commissioner: May I have the question?

(Thereupon, the reporter read the pending question.)

The Commissioner: Objection sustained.

By Mr. Kissam:

Q263. General, after the war, or during the war, for that matter, while you were in Australia, did you ever write a report, which has been filed with the War Department, relating to your participation in the Philippine situation? A. I don't recall any report as such, but we are preparing a report of the engineering operations in the Pacific, and Volume 1 has been prepared and is being prepared for Colonel Meidling, under my general supervision, and based on reports and files, which pertain to my headquarters during the conduct of the campaign.

Q264. You mean that is something that is still in the process of preparation? A. Volume 1 is published, and it is to be in eight volumes; two are in Government print, and five of them are in—

Jt. 430

Q265. There has been testimony, and it is in evidence that a report was written by many officers, one of whom was General Drake, shortly after they were liberated, which is on file with the War Department and describes his actions as Quartermaster in the Philippine campaign.

My question was an attempt to determine whether or not any similar report was written by you? A. I did not prepare any such similar report, other than that which is in this case now.

Q266. Just one other question: There has been testimony that there was a meeting between Mr. Rock and General Grunat in General Grunert's headquarters in 1941. Were you, by chance, present at that conference? A. I have no knowledge of that conference, inasmuch as I believe it was prior to my arrival in the Philippines in October.

Q267. You did not arrive until October? A. October, 1941.

Mr. Kissam: Thank you, Your Honor.

Mr. Connolly: No other questions.

Jt. 431 Redirect Examination

By Mr. Barnes:

Q268. General Casey, just a few questions on your cross-examination.

I believe, yesterday, you referred to Lieutenant Buchanan, I believe it was, in charge of demolition. A. Buchanan.

Q269. And then you referred to him, specifically, yesterday, in connection with the demolition of the power plant in Manila; is that correct? A. I did.

Q270. And you have referred to the strategic situation, with respect to the Jap requirements of petroleum products of all types, at that time. Do you recall the power plant that was there? A. I do. We had a hydro-electric power plant in Caliraya, which we disabled through the National Power Corporation, and I did that directly with them, inasmuch as I had worked with them previously from 1937 to 1940. But on the Manila steam station, I instructed Lieutenant Buchanan to destroy the coal fuel steam turbines and generating units, but to leave the oil fuel unit still in operation.

We knew we had to leave some electric power source for water supply, in pumping, but we wanted to leave
Jt. 432 that unit there, even to require the Japanese to use oil fuel, rather than coal, in order to maintain even this minimum amount of utility services, which is typical possibly of the importance we attached to the releasing of the oil stocks to the Japanese.

Q271. Now, you referred to the fact that, when you returned to Manila on December 24, the headquarters had already been moved out. A. Yes.

Q272. Where was the Quartermaster, on December 24, if you know? A. I believe he was in Corregidor, but at any rate, he had left Manila.

Q273. You referred, just a moment ago, on your cross examination by Mr. Kissam, to your duties with respect to the real estate, since the war.

Since you left Manila, what has been your position—what has your position been while you were in the Far East? A. With the exception of the Philippine campaign, on Leyte and Luzon, during which period I was Commanding General, I had been chief engineer for General MacArthur all through the war, and as such, one of our functions is the control of real estate activities in the Far East Command.

Q274. At any time since the termination of the
Jt. 433 war, has any request been presented to your office by any of the Oil Companies, Plaintiffs in this case, for reconveyance to them, from the Government, any real estate or terminal properties at Pandacan?

Mr. Kissam: Just a second, if you please. I object to that as being immaterial. I know nothing in our petition which would make that material, because there is no claim in any of the petitions as to real estate.

Mr. Barnes: How could we requisition the plant, without the real estate, Your Honor?

Mr. Kissam: We have the real estate back. Earth is still the earth.

The Commissioner: If the Government took it, it seems the title would go to the Government.

Mr. Connolly: They returned the real estate, so the Petitioners are now in possession of the several pieces of real estate.

The Commissioner: The objection is overruled. Let him testify.

Mr. Kissam: I make the further objection, on the ground this witness is not in the proper department of the Army to make his testimony appropriate, even if it were relevant.

The Commissioner: I think he can testify to what he knows. It is not necessarily a conclusion, but he
Jt. 434 can testify to what he knows about it.

Mr. Kissam: You mean he is qualified to testify to any action of that kind, because he was the Chief Engineer, or in command?

Mr. Barnes: Your Honor, I think Mr. Kissam is shutting his eyes to the testimony. The witness said that one of his duties was to have charge of the real estate activities of the Army in the Far East area.

By Mr. Barnes:

Q275. Do you recall the question, General? A. I would like to have it repeated.

(Thereupon, the reporter read the pending question, as follows:

"Q. At any time since the termination of the war, has any request been presented to your office by any of the Oil Companies, Plaintiffs in this case, for reconveyance to them, from the Government, any real estate or terminal properties at Pandacan?")

Mr. Kissam: I think the further objection is, that the question assumes a fact that is not in evidence, that there was a formal conveyance. You can take property without a formal transfer of paper title. There is not anything in this record showing any formal paper title being transferred. That is a further objection.

Jt. 435 The Commissioner: The objection is overruled.

The Witness: To my knowledge, no such request had been made, nor acted on, and in my capacity as Chief Engineer, I feel that, if such had been made,—

Mr. Kissam: I object to the witness speculating, if Your Honor please.

The Commissioner: Withhold further answer until a further question.

By Mr. Barnes:

Q276. What was your operating procedure, as Chief Engineer, with respect to having individual requests for reconveyances of properties brought to your attention?

Mr. Kissam: That is objected to, on the ground that the question is too general.

The Commissioner: The objection is overruled.

The Witness: One of the functions of the engineers of the various commands pertains to real estate, which is incident to general renewal or repairs of utilities; and in the AFWESPAC, our engineers would handle all real estate matters, pertaining to the acquisition of real estate, leases, dispositions, transfers, etc.

By Mr. Barnes:

Q277. My question was, to what extent were individual transfers brought to your attention, as Chief Engineer?

Jt. 436 A. Copies of the important transfers were forwarded from one of the Commanders to General Headquarters, where they would be referred to my office.

Q278. Would the conveyance or reconveyance of the Pandacan properties be an important transfer, as you have just used that phrase?

Mr. Kissam: That is objected to, Your Honor please. There is no testimony here of conveyances. We make no contention that paper title was transferred and these questions are all predicated on such assumption.

The fact is, the properties were taken; and the fact is,

the properties were returned; and we are back in status quo, so far as the real estate is concerned.

If we do not give paper title, we naturally do not ask for the return of paper title.

Mr. Barnes: Your Honor, with all due respects, Mr. Kissam is now dealing with the United States Government, and the Constitution says that the disposition of Government property is subject to the control of Congress, and Congress has set forth certain means by which Government property can be disposed of.

The Commissioner: I think, if it were my property, and I thought the Government was taking it, I would ask to take it back. The objection is overruled.

Jt. 437 Mr. Barnes: Will you read the pending question, please?

(Thereupon, the reporter read the pending question.)

The Witness: It would.

By Mr. Barnes:

Q279. General Casey, you were asked about the records which you have reviewed, and you referred to the fact that the Claims Service, AFWESPAC, had, on various occasions, requested information from you.

Did they request information from you in connection with the claims of the Oil Companies? A. They did.

Q280. Did you review your recovered directives to find documents that pertained to the claims of the Oil Companies? A. I reviewed them, page by page, and in the file copy, anything which had the slightest reference to any of the actions affecting these oil properties, or the general oil situation, I made a true copy and furnished to the Claims Section, AFWESPAC, without editing it.

Q281. That comprises the material which I showed to Mr. Kissam earlier, which you reviewed, yesterday, in my office; is that correct? A. If those are the same papers, yes.

Q282. I will represent to you that they were the
Jt. 438 same papers you were looking at yesterday? A. Yes.

Q283. Have you also, in connection with the preparation of this history, which I believe covers all of the engineering activities throughout the southwest Pacific campaign—is that correct? A. That is correct.

Q284. Have you also reviewed all the recovered records

of the engineers, relating to the Philippine campaign? A. Yes.

Q285. And did you have Colonel Meiderling meet you in Washington, on Monday with the records which he had, and was working on in connection with that history, that related to the Oil Companies? A. I did. When I heard I was being ordered down here, I dispatched a letter to Colonel Meiderling asking him to appear here at 9:00 o'clock Monday, with all file copies or the files recovered from the Philippines, and with references to any copies in it that might refer, at all, to this incident.

Q286. Let me show you this document, General Casey, and ask you whether that is a copy of a communication you received from the Department of Justice in connection with these cases, prior to your testifying here?

Jt. 439 A. That is the first and only copy I have received.

Q287. Did you ever answer that letter? A. I did not answer it.

Mr. Barnes: Your Honor, I would like to mark the letter for identification, please, in view of the question that has been raised as to the degree to which the witness has been influenced by the Government attorneys.

The Commissioner: Are you offering it, or do you merely want it marked for identification?

Mr. Barnes: I will offer it in evidence.

The Witness: I might add, off the record,—

(Here followed discussion off the record.)

Mr. Connolly: No objection.

Mr. Kissam: No objection.

The Commissioner: So received.

(Said letter, dated 9/21/49, from Attorney General to General Casey, marked "Defendant's Joint Exhibit 8," was admitted in evidence, and made a part of this record.)

Mr. Barnes: That is all I have to ask him.

The Commissioner: Anything further?

Mr. Connolly: Just one or two questions.

Recross Examination

By Mr. Connolly:

Jt. 440 Q288. General Casey, when did you return to Manila, after you left Australia? A. On or shortly after February 1, 1944, when we had retaken Manila.

Q289. Was that 1944 or 1945, General? A. 1945.

Q290. And you came back to Manila in the capacity of Chief Engineer for General MacArthur? A. I went back a number of times after that.

Q291. Now, at that period, in and after the time that the Army returned to Manila in 1945, did you have occasion to visit the land in and about Pandacan, where the oil companies' facilities had previously been? A. I did.

Q292. Who was in possession and control of that land, at that time? A. Certain Army units had utilities there, a few installations, and put up huts and places for various and sundry units that were established in the Manila area.

Q293. That is to say, the Army was then actually occupying the real estate on which the Oil Companies' installations had been at Pandacan? A. The Army was occupying fully every useful area in Manila, because of the difficulties of—

Q294. I am sure there were many problems
Jt. 441 elsewhere than in the Philippines, but my question is merely directed to the Pandacan installations. A. I don't recall what we had at the Pandacan installations, but I believe we had either a supply or storage or docks or—

Q295. How long did that state of affairs continue, General Casey? How long did the Army continue to occupy the Pandacan real estate? A. I don't recall how long they occupied the actual Pandacan installation.

Q296. During the year 1945, didn't you receive requests from some, or all, of the oil companies, who wanted to get back the use of their lands? A. No.

Q297. And when I say "you," General Casey, I mean you, personally. A. I, personally, did not receive any such.

Q298. Do you know a Mr. Parrish, connected with the Standard-Vacuum Oil Company? A. I know him, yes.

Q299. Does it refresh your recollection that Mr. Parrish spoke to you about the question of when the Standard-Vacuum Oil Company was going to be able to get its lands back, in connection with its Pandacan installation?
Jt. 442 A. I know that the Oil Companies were anxious to get back into the Philippines, and we also were anxious to get them back to restore activities and furnish fuel for the Army services.

Q300. When you say you knew they were anxious to get back, you knew, did you not, that they were making requests to get back their lands; correct? A. Yes.

Q301. And also, from time to time during the year 1945, as the Army finished with its use of particular portions of land of the Pandacan installations, that the Oil Companies were permitted to take those portions of that land over? A. Yes.

Q302. In other words, they released portions of the land to the Companies— A. I think the general procedure was, that properties which were not temporarily required by the Army, reverted to their original land owners.

Q303. And didn't it happen, from time to time, as the Army's need to use particular portions of the property ceased, that those portions were released to the Oil Companies? A. Yes.

Q304. And didn't that continue to happen all through the year 1945, and part of 1946? A. Yes

Jt. 443

Q305. And didn't there come a time, early in 1946, when the Army had released to the Oil Companies all of the real estate involved in the Pandacan installations? A. Yes; on some basis, it was reverted to the original owners, and that was the general procedure to be followed.

Q306. No, General Casey, I did not ask you anything about the legal effects of the reversion; and I ask that that last volunteered statement of the witness be stricken.

The Commissioner: The motion is allowed.

By Mr. Kissam:

Q307. General Casey, you told Mr. Barnes that the Quartermaster was out of Manila on December 24, 1941. Did you mean that? A. I said he left Manila during December 24, 1941; he was not there.

Q308. You mean the Quartermaster in person, or his entire staff? A. That, as I recall it, was when Colonel Drake—

Q309. I don't think Mr. Barnes mentioned Colonel Drake by name. A. No, the answer was referring to a question, which I interpreted to be: "Was the Quarter-

Jt. 444

master in Manila on December 24?"

Q310. And your answer then related to your understanding that it was General Drake? A. Yes.

Q311. Because you don't mean to imply there were no Quartermaster officers and general staff in Manila on December 24? A. No; I recall that Colonel there, who was handling the water installations.

Q312. Colonel Kalakaka? A. Yes, he was there.

Q313. And as late as January, 1942, certain of his officers were in Manila? A. Yes, a small detachment.

Q314. So the Quartermaster was represented right up until the date when you left, up through December 31? A. I left in the early morning of January 1.

Mr. Kissam: That is all.

The Commissioner: Let us take a brief recess, before you proceed, Mr. Barnes.

* * * * *

Jt. 449 * * * * *

Redirect Examination

By Mr. Barnes:

Q315. General Casey, you used a phrase, in response to a question by Mr. Connolly, that, from time to time, the Army released real estate.

What do you mean by the word "released"? A. Releasing areas no longer required to the original owners, from whom we had taken temporary occupancy.

Sometimes, especially on our first entry into Manila, for example, we would go in and physically occupy
Jt. 450 an area, and we did not have time to find out who the original owner was, and in those cases, we physically occupied the area.

Now, when the owner was identified, and when we had time to prepare, for example, for the orderly development of land acquisitions, we contacted the owner of that land and made arrangements for the release, or even purchase, in some cases, for the land that was required for military purposes.

Q316. Now, you also referred to certain verbal requests which you had received from representatives of the Oil Companies, and I think you specifically referred to Mr. Parrish of Standard-Vacuum as having made such a request.

What was the nature of those requests? A. I don't recall, in too much detail, Parrish's request. I do know that many representatives of installations that had operated in the Philippines previously, were anxious to restore their activities. For example, the banks wanted to re-initiate banking activities.

There were several factors involved; one was just the need of getting priority materials for the rehabilitation of buildings that had been destroyed. There were problems

in connection with permits for the reinitiation of, as I say, banking activities or commercial oil factors, so that there were many problems, most of which were taken up by those representatives, not with me, based on real estate
Jt. 451 or engineering, but with our G-4, who was then General Whitlock, and possibly with General Marshall, who was also deeply concerned with that type of activity; and when I was brought into the picture would be mostly in connection with the release of construction materials for rehabilitation, or if it was a real estate matter involved, I might be taken into it.

Mr. Barnes: That is all.
Mr. Connolly: That is all.
The Commissioner: All right, General Casey.

(Witness excused.)

Mr. Barnes: General Marshall.

RICHARD JACKLIN MARSHALL, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct Examination

By Mr. Barnes:

Q1. Will you state your full name, please? A. Richard Jacklin Marshall.

Q2. Where do you reside? A. Lexington, Virginia.

Q3. Do you hold military rank? A. I am re-
Jt. 452 tired Major General of the United States Army.

Q4. What is your present occupation? A. Superintendent of the Virginia Military Institute.

Q5. What was your position in the Army in December, 1941, General? A. Deputy Chief of Staff of the United States Armed Forces in the Far East.

Q6. And your headquarters, at that time, were in Manila, on the 1st of December? A. In Manila.

Q7. Are you familiar with the document, which is referred to as the Philippine Department Plan—Orange? A. Only very generally. Of course, I have seen it, but I couldn't recall offhand—I know that it existed; I have seen it from time to time.

Q8. Subsequent to the outbreak of the war in 1941, was

the Orange Plan ever put into operation? A. No, the Orange plan was not put into operation. Certain things that were in the Orange Plan were done, but the Orange Plan was not put into operation.

Q9. As a strategic plan? A. No.

Q10. Did you, in your capacity as Deputy Chief of Staff, ever receive a request from the Quartermaster
Jt. 453 for authority to take over the facilities of any of the Oil Companies at Pandacan?

Mr. Kissam: Just a minute! That is objected to. There is nothing to suggest that there would be any need for such request.

Mr. Barnes: I have to do this one step at a time, Your Honor. I intend to bring that out.

Mr. Kissam: That is objected to, until there is some proof of necessity of such request; otherwise, it is irrelevant.

The Commissioner: Reframe your question, and see if you cannot get a proper foundati for it.

By Mr. Barnes:

Q11. General Marshall, under the situation which existed in the Philippines after the outbreak of the war, during December, 1941, did the Quartermaster, to your knowledge, have authority to take either the facilities of the Oil Companies at Pandacan, or anywhere else, without prior authority from the Commanding General? A. No.

Q12. To your knowledge, did the Quartermaster ever request authority to take over the facilities of the Oil Companies at Pandacan?

Mr. Kissam: Just a minute! That is objected
Jt. 454 to on the ground, first, that General Marshall has testified that he was Deputy Chief of Staff. The state of the record shows that the Chief of Staff, Major General Richard Sutherland, was the person who communicated with General Drake, and I submit there is no foundation for this question, unless the General is willing to undertake to speak for the Chief of Staff, and will represent that he knows everything that General Sutherland did.

The Commissioner: The objection is overruled.

Mr. Kissam: An exception.

Mr. Barnes: Will you repeat the question, Mr. Reporter?

(Thereupon, the reporter read the pending question.)

Mr. Kissam: I make the further objection on the ground that the testimony is that he did not ask for authority; he was directed to do it.

The Commissioner: The objection is overruled.

The Witness: So far as I know, he did not ask for authority to take it over.

By Mr. Barnes:

Q13. As Deputy Chief of Staff, what were your principal duties or responsibilities? A. I was usually concerned with logistic matters, and with personnel matters to a certain extent.

Q14. And how does that differ, if it does, from
Jt. 455 what General Sutherland, as Chief of Staff, was doing? A. General Sutherland was mainly concerned with the operating end, and with decisions, or, rather, the plans that were put up to the Commander, which developed as a result of the decision of the Commander and—

Q15. In other words, would you say that his functions were more tactical, as opposed to yours being logistic? A. Generally speaking, I would say so.

Q16. If a request had been made by the Quartermaster for authority of the type we have just referred to, would that, under normal circumstances, have come to your attention? A. Yes; normally would have done so, but not necessarily.

Q17. But if such request had come to your attention, do you think you would recall it now? A. I believe I would. Pandacan was a large enough installation that I would.

Q18. Do you recall any report ever having been made by the Quartermaster, to the effect that the Quartermaster had taken title to Pandacan? A. So far as I know, there was never any report that the Quartermaster had taken Pandacan.

Q19. And, again, if such a report would have been made,
would it, under normal circumstances, have come
Jt. 456 to your attention? A. It normally would have come to my attention.

Q20. And if it had come to your attention, would you probably remember it? A. I would remember it, I feel quite sure. I was quite familiar with Pandacan.

Q21. General Marshall, let me show you this document, which has been marked "Defendant's Exhibit No. I," which purports to be a copy of an undated letter, addressed to

the Standard-Vacuum Oil Company, and ask you whether you recall signing that letter, or a letter of similar tone? A. I recall something to this effect; I couldn't say this was exactly—

Q22. Will you tell us, to the best of your recollection, the circumstances under which you signed that letter? A. During the last two or three days in Manila, maybe the last three or four days in Manila, General Casey came to me a number of times in regard to demolition. He was charged with destroying all of those things which would be of assistance to the Japanese forces.

He came to me, and I have a distinct recollection of being under an electric light, or some other kind of light, and had substantially this letter, and asked me to sign it, and as I recall, one of his reasons was to be pro-

Jt. 457 tection to the Oil Companies when the Japanese forces would come in.

We could see no hope of holding Manila. As a matter of fact, we were getting out of Manila.

Q23. Did you sign the letter, when he brought it to you? A. To the best of my remembrance, I did sign that letter. I remember telling him distinctly that it was all right.

Q24. And do you recall what was done about delivery? Did you attempt to have it delivered by anybody on your staff, or did you return it to General Casey? A. I gave it back to Casey; he was going to deliver it.

Q25. And you place that incident or episode during the last three or four days in Manila? A. Yes.

Q26. That would be probably the 28th or 29th or 30th? A. 27th to 31st.

Q27. Somewhere in that vicinity? A. Yes.

Q28. You can't tie it down any more closely than that? A. No.

Mr. Barnes: That is all.

Jt. 458 Cross-Examination

By Mr. Kissam:

Q29. General Marshall, am I correct in stating that your immediate superior on the staff of General MacArthur was the Chief of Staff, General Richard Sutherland? A. That is correct.

Q30. Do you know General Drake? A. Quite well, yes.

Q31. Beg pardon? A. Yes.

Q32. He was Quartermaster on the staff of General MacArthur, was he not? A. That is correct.

Q33. Under the normal procedure, from time to time, would he receive direct instructions from the Chief of Staff, General Sutherland? A. I believe that he might. He might very well.

Q34. You wouldn't say, would you, that you know every single thing that the Chief of Staff, General Sutherland, did prior to the outbreak of the war in Manila? A. No, I do not.

Q35. You were both paying attention to your respective duties, one as Chief of Staff, and the other as
Jt. 459 Deputy Chief of Staff? A. Yes, sir.

Q36. Now, I will tell you that General Drake, in this report, has testified that he was instructed by General Richard Sutherland to call a meeting of the major Oil Companies, that he did call such a meeting, and that he was instructed by General Sutherland to tell them that, in the event of war, their facilities and stocks would be taken over?

Mr. Barnes: I object to that, your Honor, unless Mr. Kissam can point out where General Drake so testified.

Mr. Kissam: He testified, in part, commencing at page 27, Exhibit 3, I believe, which is General Drake's report in evidence—correction: Defendant's Exhibit 3, which is in evidence, contains the following statement, which is related as coming from General Sutherland:

"On December 12th I called a conference of interested Army and Navy officers and representatives of the oil companies to determine the most sagacious manner of disposal. This group, after much discussion, agreed to turn over the control of distribution and issue to the Army; all the facilities of these companies, including their transportation and personnel, were placed at the Army's disposal."

Mr. Barnes: Your Honor—

Mr. Kissam: You find that reflected between pages 97 and 100 of the record.

Jt. 460 Mr. Barnes: That does not indicate that General Sutherland directed General Drake to take over the Oil Companies.

The Commissioner: Can you cite the record of the testimony of instructions from General Sutherland to General Drake?

Mr. Kissam: I then direct your attention to the testimony. He was directed at page 27, which was the first direction, and at page 76 or 77, my notes indicate—

The Commissioner: What is the other page?

Mr. Kissam: At page 77, General Drake's report of what he did was offered in evidence as Defendant's Exhibit 3.

Now, just reading an extract from the report relating to the meeting which General Drake, at page 27, testified having called:

"Q65. First of all, who directed you to call a meeting? A. I was directed by General MacArthur, through his Chief of Staff, General Richard Sutherland."

Mr. Barnes: So far as this record shows, that is the only direct authorization by General Sutherland, in connection with the meeting, direction to call it.

Mr. Kissam: You have a situation where he was directed to call a meeting. He testified he called the meeting, and we have in evidence his report, to which I attract your attention, which was made by General Drake before this litigation was started, and on file with the War Department.

Jt. 461 The Commissioner: The objection goes to the form of the question. I think the record is sufficiently clear to clarify the question. He may answer.

Mr. Barnes: I think the question had better be read by the reporter.

(Thereupon, the reporter read the pending question.)

By Mr. Kissam:

Q37. The question I put, after that statement, was whether or not you have any knowledge, or did this conversation and instruction from General Sutherland to General Drake ever come to your official attention? A. I don't recall any such conversation as that, or any reference to it. It is entirely possible that it—

Q38. In other words, there is no way of your knowing if there was a conversation between General Sutherland and General Drake, unless you were present; you might not have known about it? A. Yes.

The Commissioner: Is that a question or an observation?

Mr. Kissam: He answered the question "Yes." Let us see if we have it on the record.

The reporter said he answered "Yes."

By Mr. Kissam:

Q39. Who was Major General Grunert? A.
Jt. 462 Commanding General of the Philippines Department.

Q40. And prior to General MacArthur's being commissioned, I should say, in the United States Army, when USAFFE was formed, am I correct in stating that Major General Grunert, up to that time, had been the officer in command of the Philippines? A. Yes; he commanded the active forces in the Philippines, the active United States Army forces in the Philippines.

Q41. Prior to the time that General MacArthur resigned as adviser— A. When he was called to active duty.

Q42. Yes, that is right, and in relation to the so-called Orange Plan, after General MacArthur took over, after USAFFE was formed, there has been testimony that a new plan was in process of formation under the supervision of General MacArthur.

Is that your recollection? A. Yes.

Q43. Am I correct in stating that that new plan differed fundamentally from the Orange Plan in relation, primarily, to the tactical strategy of the two plans; is that correct? A. It did differ in that respect, but it differed in so many respects that I don't believe that that one description is sufficient.

Jt. 463 It had to differ in many ways, because it envisioned the use of the Philippine Army.

Q44. Was that plan, that is, the one which General MacArthur was formulating, ever completed, prior to the invasion in December of 1941? A. I don't believe that, to that question, a flat yes or no answer can be made. A plan is always in the course of preparation and revision. The essential features of that substitute plan were prepared; it was not a complete document, if you are talking about documentation.

Q45. Well, it certainly wasn't complete to the extent that any formal copies had been prepared and sent to the War Department, or had even been distributed in the lower stages of command? A. Yes.

Q46. Is that correct? A. I believe that is correct.

Q47. Now, General Drake, as I understand it, was the Quartermaster, first, of the Philippine Department, and then on the staff of General MacArthur? A. That is correct.

Q48. Was it a part of his duty, normally, to be responsible for the procurement of fuel supplies? A. Yes, sir.

Jt. 464 Q49. That would be one of his special jobs? A. That's right.

Q50. In the formation of any war plan, is there generally some period that relates to the fuel supply, that is, some part prepared under the supervision of the Quartermaster? A. If you are going into the question of technical definition of plans and appendices, it comes into either the Quartermaster's Annex or the Quartermaster's Appendix; at least it did prior to World War II.

Q51. You have got a General Staff, and you have got a Special Staff; isn't that right? A. Yes.

Q52. And your General Staff— A. It might be in the G-4 Annex and it might be in—it might or might not be amplified in the Quartermaster Appendix.

Q53. You mean if the G-4 Annex was complete, the plan was complete in all details, there would be something in it from the Special Staff; is that it? A. There would be a directive to the Special Staff.

Q54. And the Special Staff would carry out that directive, with their own detailed plan, as to the actual manner in which the fuel would be procured and stored; cor-

Jt. 465 rect? A. That is correct.

Mr. Kissam: Thank you.

By Mr. Connolly:

Q55. General Marshall, you said, with reference to the new plan that was in course of preparation by General MacArthur in December, 1941, that one of the points of difference was that it contemplated the use of the Philippine Army?

You nodded your head? A. Yes.

Q56. Was that your impression, or is it your impression, that the so-called Orange Plan did not contemplate the use of the Philippine Army? A. It did not contemplate it as—well, in the same employment, in contemplated—the Orange Plan contemplated the use of units from the Philippine Army, integrated into the department plan, but not as whole divisions and not as the strategic employment of the Philippine Army, as was done by General MacArthur later on.

Q57. That is, in your recollection, the principal point of difference? A. That is all I recollect.

Q58. Now, you referred to the letter which was shown to you, or copy of the letter, which is undated, but leaves a space for your signature, which is Defendant's
Jt. 466 Exhibit 1,—and you place the approximate time of having that letter presented to you by General Casey as being, as I recall it, sometime between the 27th of December and the 31st of December.

Do you recall what you were doing at the time that document was placed in front of you by General Casey, or some document was placed in front of you for signature? A. No; I just recall General Casey coming in there and telling me he thought we should have a written order, and have authority to speak for General MacArthur on a matter such as that there in Manila.

Q59. My question was directed to your actions at the time. A. I don't recall just what I was doing, now.

Q60. Is it possible that that meeting took place as early as the 26th of December? A. It might have, but I would have to find out, in connection with that, from some operations reports that I haven't got available here, and I think it was between the 27th and 31st.

Q61. You have stated your recollection and— A. I don't think it could have been earlier than the 27th.

Q62. You have stated your recollection that, generally speaking, it was within a few days prior to Manila
Jt. 467 being evacuated, but what I was getting at is, whether there was anything more clearly defined in your mind, that you can say it was not earlier than the 27th, as distinguished from the 26th or 25th. Isn't it equally possible that that transaction took place as early as the 26th or 25th? A. My recollection would not serve me, to tell me exactly which day it was. I connect it with the preparations to close up in Manila. Now, these phases there commenced with the 24th, when we started moving everything as rapidly as we could. We moved, for several days, everything we could, and then preparations for the destruction of what remained became prevalent in our minds, and there was just that week-end there, and I would say it was towards the end of the week when the destruction became uppermost with us.

Q63. In other words, there was a great deal of activity going on at that time; isn't that so? A. Naturally. That is a mild statement.

Q64. And it is also so that you cannot now speak with any certainty as to the precise date on which that document was presented? A. That's right, I can't speak with certainty.

Mr. Connolly: That is all.
Mr. Barnes: No further questions.
Mr. Connolly: Just one other question.

Jt. 468 By Mr. Connolly:

Q65. General, were you subpoenaed to testify here, today? A. No, sir. I received a letter.
Q66. From Mr. Barnes? A. Signed by Mr. Morrison.
Q67. Of the Attorney General's office? A. Yes.

Mr. Connolly: That is all.
The Commissioner: Is that all?
Mr. Barnes: That is all.

(Witness excused.)

Plaintiffs' Joint Exhibit 3

568

HEADQUARTERS
UNITED STATES ARMY FORCES IN THE FAR EAST
OFFICE OF THE COMMANDING GENERAL
MANILA, P. I.

IN REPLY REFER TO:

December 25, 1941.

Asiatic Petroleum Co., Manila, P. I.
Tidewater Associated, Manila, P. I.
Caltex Corp., Manila, P. I.
Standard Vacuum Oil Co., Manila, P. I.

Dear Sirs:

Effective immediately all petroleum stocks, storage and handling facilities, etc., at your Manila, Pandacan oil depots are requisitioned by the U. S. Army. Any action deemed necessary for the destruction of this property will be handled by the U. S. Army. However, your personnel must remain on duty under the direction of the U. S. Army and obey any instructions given them by the U. S. Army.

Your full and active assistance and cooperation are requested.

By command of General MACARTHUR:

(Signed) HUGH J CASEY
HUGH J. CASEY
Colonel, C. E.
Engineers.

Plaintiffs' Joint Exhibit 9

569 DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

NAC:KMB
154-48265
154-48319 December 28, 1949 mw

Allen F. Maulsby, Esq.,
Cravath, Swaine & Moore
15 Broad Street
New York 5, New York

Re: Shell Company of Philippine Islands, Ltd., v. United States, Court of Claims No. 48265.

Standard-Vacuum Oil Company v. United States, Court of Claims No. 48319.

Dear Mr. Maulsby:

You will recall that in a discussion held off-the-record at the hearing held on November 29, 1949, relating to defendant's offer of the "Orange Plan" as defendant's Exhibit 5, the Commissioner asked the attorney for the defendant whether he would cooperate with plaintiffs in attempting to secure from the Army, copies of any additional plans which might pertain to the subject matter of these actions. Government counsel agreed to do this upon receipt from the plaintiffs' attorneys of specific identification of the documents which might be required.

We are anxious to push these cases to a conclusion as rapidly as possible, and would appreciate word from you as to whether you intend to avail yourself of this offer. If you do so intend, we should appreciate receiving a specific

identification of the documents for which you desire to have a search made.

Similar letters are being sent to Mr. Tumulty in connection with the *Tidewater* case, and to Mr. Kissam in connection with the *Caltex* case.

Sincerely yours,

For the Attorney General

(Signed) NEWELL A. CLAPP
Newell A. Clapp
Acting Assistant Attorney General

CC: Honorable W. Ney Evans
Commissioner
United States Court of Claims
Washington 6, D. C.

Plaintiffs' Joint Exhibit 10

570 LETTERHEAD OF

CRAVATH, SWAINE & MOORE

March 2, 1950

Shell Company of Philippine Islands, Ltd. v. United States
(Court of Claims No. 48265)

Standard Vacuum Oil Company v. United States
(Court of Claims No. 48319)

Dear Sir:

This will formally acknowledge receipt of your letter dated December 28, 1949, with reference to which Mr. Maulsby has heretofore orally communicated with Mr. Barnes.

As the Joint Record now shows, the so-called "Orange Plan" for the defense of the Philippines consisted of three parts—(1) the basic plan, (2) the annexes thereto prepared by the General Staff, Philippine Department, and (3) the supplements thereto prepared in compliance with the directives contained in the basic plan and its annexes. The Gov-

ernment has introduced in evidence, as defendant's Joint Exhibit 5, a photostatic copy of a document entitled "Philippine Department Plan—Orange (1940 Revision)", which contains only the first two parts of the Plan mentioned above. As you know, the witness who identified the document testified that she had not made any search, nor had she been directed to search, for the supplements to the Plan referred to at pages 17-18 and 177-177A of the Exhibit (Root, Tr., pp. 313, 314, 330).

Under the circumstances, without having access to the entire Plan, it is difficult for us to be precise in our identification of the portion or portions thereof which might have a bearing upon the pending cases. In general, of course, the portions of the Plan that would be of interest are those containing the details of the Plan with respect to procurement of gasoline, fuel oil and other petroleum products. From the testimony thus far in the record, we assume that those matters are dealt with in the portion of the
571 Plan known as the Quartermaster Plan (or possibly a subsidiary plan known as the Gasoline Supply Plan). If, however, it is the intention of the defendant to predicate any argument in these cases upon the fact that the portions of the Plan which the defendant has produced do not contain the provisions with respect to oil stocks and facilities described in the testimony of General Drake and other military witnesses, we must insist, as a necessary foundation to that argument, upon the production of the entire Plan with all its supplements.

Very truly yours,

Newell A. Clapp, Esq.,
Acting Assistant Attorney General,
Department of Justice,
Washington, D. C.

Copy to Hon. W. Ney Evans, Commissioner,
United States Court of Claims,
Washington, D. C.

Plaintiffs' Joint Exhibit 11

572

COPY

DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

Address reply to
"The Attorney General"
and refer to

NAC:KMB
154-48324

December 28, 1949

Leo Kissam, Esq.,
20 Pine Street
New York 5, New York

Re: Caltex (Philippines) Inc., v.
United States, Court of Claims
No. 48324.

Dear Mr. Kissam:

You will recall that in a discussion held off-the-record at the hearing held on November 29, 1949, relating to defendant's offer of the "Orange Plan" as defendant's Exhibit 5, the Commissioner asked the attorney for the defendant whether he would cooperate with plaintiffs in attempting to secure from the Army, copies of any additional plans which might pertain to the subject-matter of these actions. Government counsel agreed to do this upon receipt from the plaintiffs' attorneys of specific identification of the documents which might be required.

We are anxious to push these cases to a conclusion as rapidly as possible, and would appreciate word from you as to whether you intend to avail yourself of this offer. If you do so intend, we should appreciate receiving a specific identification of the documents for which you desire to have a search made.

Similar letters are being sent to Mr. Maulsby in connection with the *Shell* and *Standard Vacuum* cases, and to Mr. Tumulty in connection with the *Tidewater* case.

Sincerely yours,

For the Attorney General

(Signed)
NEWELL A. CLAPP
Acting Assistant Attorney General

CC: Honorable W. Ney Evans
Commissioner
United States Court of Claims
Washington 6, D. C.

Plaintiffs' Joint Exhibit 12

573

LEO T. KISSAM
20 PINE STREET
NEW YORK 5, N. Y.

CHARLES E. POWERS
JOHN P. BOLAND
SEDGWICK SNEDEKER
DONALD S. WILSON

WHITEHALL 3-4876
CABLE "LEKISSAM"

January 19, 1950

Mr. Newell A. Clapp
Acting Assistant Attorney General
Department of Justice
Washington, D. C.

Attention: Kendall M. Barnes, Esq.

Re: 154-48324 Caltex (Philippines) Inc. vs. U. S.
Court of Claims No. 48324

Dear Mr. Barnes:

Please excuse my delay in replying to your letter of December 28, 1949, but until today I have been almost continuously engaged in one case, and I am in the office today only because the trial Judge declared a recess to attend to some personal business.

Regarding the subject matter of your letter, my own estimation of the situation is simply this—in our case the plaintiffs produced certain witnesses who testified as to the existence of the Orange Plan and that included as part of the plan was a Quartermaster's Section which in turn included a Gasoline Supply Plan. At the last hearing on November 29, 1949, you introduced as the Orange Plan defendant's Joint Exhibit 5 (JT 324). Captain Root, a Government witness, testified (Joint 329-330) that she did not look for the various staff plans directed to be prepared under Article IX (Staff Plans), paragraph 33 (pencil page #177) of the basic Orange Plan identified as defendant's Joint Exhibit 5. The basic Orange Plan (Joint Exhibit 5) as indicated, contemplated and directed that the service agencies which included the Department Quartermaster formulate as part of the Orange Plan their own individual plans (pencil page #177a of defendant's Joint Exhibit 5). As indicated to the Commissioner at the hearing on November 29, 1949 (Joint 323), General Drake in the Caltex case (page 19 question 38) on direct examination, testified as to the existence of a section in the plan (identified as the Orange Plan) which was called the Gasoline Supply Plan. General Drake further testified (Caltex SM 20-21) that under the plan the Army, in carrying out its plan of defense, intended to utilize the fuel supplies on the islands of the Philippines belonging to the commercial oil companies and that this plan was never changed. Colonel Cramer corroborated the existence of this section of the plan (Caltex SM 211, 215, 216, 237, 240); Colonel
574 Harwood, the War Plans officer, Quartermaster staff, testified (Caltex SM 245) that he was familiar with the Orange Plan and that the plan contemplated the use of the supplies and facilities of the commercial oil companies in the Philippines (Caltex SM 250).

I have dictated these references by quickly thumbing through part of the minutes, but my recollection is to the effect that there are many other instances to corroborate this testimony that the Quartermaster section of the Orange Plan included a plan relating to the anticipated use of the supplies and facilities of the commercial oil companies in the Philippines in the event of war, and the most specific description which I recollect is the one given by General Drake (Caltex SM 19) in which he described it as the "Gasoline Supply Plan", and I think it is safe to say that this plan was a part of the Quartermaster plan authorized

and directed in the basic Orange Plan under Article IX— Staff Plans referred to above.

If I knew of any better identification of the documents referred to by General Drake and the other officers who corroborated the General's testimony, I would be happy to inform you as I would like very much to have an evidence the section or sections of the plan referred to by General Drake and the other officers as written corroboration of their testimony.

As I view the case to date, the plaintiff has offered uncontradicted evidence as to the existence of the sections of the plan relating to the Army's anticipated use of petroleum products in the Philippines in the event of war, and has introduced uncontradicted testimony that such plan as seen and studied by the various staff officers and subordinate officers was carried out by the Army. It seems to me that it is the burden of the defendant to contradict this proof if it can do so, and I see no obligation whatever on the part of the plaintiff to do anything further affirmatively on this phase of the case. The control and possession of war plans is in the defendant, and if the defendant has any written contradictory proof to the present state of the record as to what the war plan was with respect to the use of petroleum products in the Philippines in the event of war, it seems to me that it is incumbent on the part of the defendant to produce such material.

A copy of this letter is being sent to Commissioner Evans and to the attorneys who represent the plaintiffs in the joint case.

Yours very truly,

Leo T. Kissam

LTK:par
#2028

Defendant's Joint Exhibit 1

575 CS-CCC 214a
Rev 14 Feb 47-1500

U-4-112,599-CC-89

RELEASE OF CLAIM AGAINST
THE UNITED STATES OF AMERICA

The undersigned represents that it is the owner and legally entitled to payment of the claim filed by it on 29 June 1946, for various quantities of diesel fuel oil, gasoline, and lubricating oil in the amount of ₱3,052,209.71, against the United States of America. In consideration of the payment of ₱2,822,432.65, the amount determined by Contract Claims Commission No. 89 to be due and owing, the undersigned agrees to accept said amount in full satisfaction and final settlement of this claim and does HEREBY UNCONDITIONALLY RELEASE the United States of America, its officers and agents, from any and all liability arising from said claim.

This release is limited to the stocks of Petroleum products at Pandacan, listed and described in the aforesaid claim, and is without prejudice to any claim which claimant may have in respect of other property or matters.

CALTEX (PHILIPPINES) INCORPORATED

By: (Signed) R J MONICAL
Claimant

Subscribed and sworn to before me this 10th day of June 1948

(Signed) S. C. ARISTORENAS
SOTERO C. ARISTORENAS
Notary Public
My Commission Expires Dec. 31, 1948
Reg. 1465 Page No. 54 Book No. IV
Series of 1948

(NOTARIAL SEAL)

Defendant's Joint Exhibit 5

576 AG No 326

REGISTER No. 32

PHILIPPINE DEPARTMENT

PLAN—ORANGE

(1940 REVISION)

Copy No. 6 of this plan already on file in TAG.

(This is a Registered Document)

RETURN TO REGISTERED DOCUMENTS SECTION
PLANS & OPERATIONS DIVISION, GSUSA
ROOM 3B854 THE PENTAGON
WASHINGTON 25, D. C.

577 . . . . .

20. JOINT ARMY AND NAVY ACTION.

a. Joint Army and Navy action will be in conformity with the provisions of the current "Army and Navy Joint Defense Plan for PHILIPPINE ISLANDS Coastal Frontier" and mutual agreements made in pursuance of those provisions.

b. Pertinent data from the Joint Plan and mutual agreements will be included in the appropriate Department General Staff Annexes, Department Service Plans, and Harbor Defense Plans.

. . . . . .

578 *g.* SIXTH SECTOR (Department Service Command Area)—FORT SANTIAGO.

h. DEPARTMENT MOBILE RESERVE—SAN FERNANDO, RAMPANGA.

i. 4th COMPOSITE GROUP, AIR CORPS—Vicinity NICHOLS FIELD.

j. NICHOLS FIELD AIR BASE, AIR CORPS—NICHOLS FIELD.

28. SIGNAL COMMUNICATIONS.

a. The Department Signal Officer to install, maintain, and operate all signal agencies at Department Headquarters. To provide and operate signal communication facilities between Department Headquarters and

War Department,
Each Sector,
Department Service Command Area and Posts of that Command,
Department Mobile Reserve,
4th Composite Group, Air Corps,
Nichols Field Air Base,
Department Service Installations, including navigation and railheads,
Land Observation Stations,
SIXTEENTH U.S. NAVAL DISTRICT,
U. S. High Commissioner,
Headquarters PHILIPPINE Army.

b. Telegraph, telephone, radio, and cable communication to be controlled in accordance with provisions of the Army and Navy JOINT DEFENSE PLAN to the extent necessary for essential requirements as to operation and censorship.

c. The Department Signal Officer

(1) to operate a Signal Intelligence Service as complete as personnel and facilities admit for obtaining signal intelligence of the enemy and insuring signal security of our own communications. Cryptographic systems will be issued and used in accordance with regulations and instructions from the Chief Signal Officer.

(2) to operate a photographic service for the purposes of ground photography of operations, training, record, public information, and identification.

(3) to issue necessary instructions for, and supervise, signal operations and the training of personnel assigned to signal communication duties.

d. Secret Army and Navy Inter-Communication: Communication by cryptographic means between Army and Navy stations will be in accordance with instructions contained in Change No. 3, Chapter 9, (June 28, 1940), of JOINT ACTION OF THE ARMY AND NAVY.

SECTION VII—PLANS

29. PREPARATION OF PLANS.

a. Based upon the PHILIPPINE DEPARTMENT PLAN—ORANGE (1940 Revision) and its Annexes, plans will be prepared as follows:

(1) *All Sectors*—By sector commanders, except that plans for FOURTH, FIFTH, and SIXTH Sectors will be prepared by the Commanding General, PHILIPPINE DIVISION; the Commanding General, FIRST SECTOR; and the Department Inspector General, respectively.

(2) *Department Mobile Reserve*—By Commanding General, PHILIPPINE DIVISION.

(3) *Defense of BATAAN PENINSULA*—By Commanding General, PHILIPPINE DIVISION.

(4) *Department Air Plan*—By Department Air Officer.

(5) *4th Composite Group, Air Corps*—By Commanding Officer, 4th Composite Group, Air Corps.

(6) *Nichols Field Air Base*—By Commanding Officer, Philippine Air Depot.

4/1/41.

579 (7) *Pettit Barracks*—By Commanding Officer.

(8) *Camp John Hay*—By Commanding Officer.

(9) *Fort Stotsenburg*—By Commanding General, FORT STOTSENBURG.

(10) *Adjutant General's Plan*—By Department Adjutant General.

(11) *Chemical Plan*—By Department Chemical Officer.

(12) *Engineer Plan*—By Department Engineer.

(13) *Finance Plan*—By Department Finance Officer.

(14) *Ordnance Plan*—By Department Ordnance Officer.

(15) *Quartermaster Plan*—By Department Quartermaster.

(16) *Signal Plan*—By Department Signal Officer.

(17) *Medical Plan*—By Department Surgeon.

(18) *Civil Affairs Section Plan*—By a designated Department Staff Officer.

30. APPROVAL AND DISTRIBUTION OF PLANS.

A draft of each plan will be submitted to the Commanding General, PHILIPPINE DEPARTMENT, for approval. Sufficient copies of each plan, as finally approved, to be prepared to include in the distribution thereof two (2) copies for Department War Plans Officer, and at least one (1) reserve copy for the office of origin.

4/1/41.

580 *b.* The Corregidor defense reserves are defined as items required by the U. S. garrison of the Harbor Defenses for six months; these reserves include six days of fire for small arms and authorized mobile artillery.

c. Sector reserves are defined as such quantities of Class III and Class IV supplies, in addition to organic equipment, required in the initial occupation of sectors, and now stored in sub-depots or posts.

d. Current post and depot stocks are items primarily used for current requirements; they are combined on M-day with the defense reserves, on stock records.

e. Property in hands of Philippine Army, on Luzon, either on loan or owned by the Commonwealth Government, is regarded as available on call, for the use of U.S. forces.

5. Procurement of Supplies:

a. Defense reserves status reports operate as automatic requisitions on the War Department.

b. Deficiencies in all reserve items are periodically reported on by Department chiefs of supply arms and services; these reports may be made the basis of special emergency requisitions by Department Headquarters.

c. Locally available supplies, facilities and equipment must eventually be taken full advantage of, to augment existing defense reserves.

The A.C. of S., G-4, and the chiefs of services constitute an informal board and planning agency for the local procurement of commodities for primary military needs, with a view to avoid mutual competition in purchase and to arrange for allocation of facilities; this provision does not invalidate the contemplated function of the "Joint Procurement Board" and "Local Joint Planning Committee"; provided for in the "Army-Navy Joint Defense Plan for the Philippine Island Coastal Frontier, 1938 Revision"; for details of composition and functions of these agencies, see Exhibit "Q". This joint board has approved certain allocations of buildings and facilities in the Manila area. (Exhibit "R")

d. Chiefs of services will develop and maintain procurement programs as exhibits to special staff plans, showing war requirements and containing the following data, viz:

Required Items
Required Quantities
Priority of Items
Procurement Source
Point of Delivery

6. Storage of Supplies:

a. The principle to be observed in the storage of supplies is that the dispositions conform to the requirements of the basic plan and its principal tactical features.

Department depots and installations continue in operation in Manila, as long as the tactical situation permits, and with sufficient personnel and supplies for the requirements of the I.P.F., and the augmented sector forces.

b. Deficiencies in Corregidor reserves are to be shipped on an early priority. The current project for the expansion of storage facilities is to be continued as funds permit.

581 IX. STAFF PLANS.

33. Directives:

a. Mission:

The supply arms and services to execute normal missions as prescribed by Staff Officers' Field Manuals FM 101-5 and 101-10, ~~and~~ such special missions as indicated in this Annex.

b. Staff Plans:

Appropriate staff plans, in draft form, will be developed to conform to the basic plan and the tactical operations contemplated therein, in a realistic manner; recommended dispositions, under these plans, are expected to apply to future maneuver situations, as a practical test. In general, these plans will contain:

(1) Operations plan for service installations for First Phase: The Covering Operations.

Second Phase: The Sector Defense.
Third Phase: The Bataan Operations.

(2) Operations plan for each installation, viz: railhead, field depot, etc., and corresponding personnel requirements.

(3) Manning tables and mobilization assignments of I.P.F. personnel.

(4) Plans for expanding existing M/day units around a nucleus of trained personnel.

(5) Labor tabulations showing numbers, projects and estimated duration thereof.

c. Installations:

The initial installations in southern Bataan involve extensive construction in terminal storage and hospital facilities; the Department Engineer is charged with this work; all staff sections concerned assist in furnishing requirement data to the Engineer.

d. Subordinate Commanders:

All subordinate commanders and Department chiefs of supply arms and services will include in their respective plans, as exhibits:

(1) Total motor requirements, showing amount of organic vehicles on hand, and the number of civilian vehicles required in addition to organic transportation to accomplish mission assigned to them. Motor transportation will be utilized to the fullest extent.

(2) Table of weapons in sectors and by units.

(3) Requirements for movements of supplies by rail or water, to show:

(*a*) Number of passengers or animals.

(*b*) Material and supplies in tons (by weight) and in cubic feet.

(*c*) Point of origin.

(*d*) Destination.

e. Determination of Means:

Means of transportation required in 33*d*(2) above, are to be determined by this Headquarters.

582 *f.* Service Agencies:

The service agencies primarily concerned in the formulation of these plans, are:

(1) The Department Quartermaster

(2) The Department Engineer

(3) The Department Ordnance Officer

(4) The Department Surgeon

(5) The Department Air Officer
(6) The Department Chemical Officer
(7) The Department Signal Officer
(8) The Department Finance Officer

Stipulation as to Printing of Record for Consideration on the Merits—filed August 13, 1952

583

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 16

THE UNITED STATES

—v.—

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED AND STANDARD-VACUUM OIL COMPANY

In accordance with the STIPULATION AS TO PRINTING OF RECORD, dated March 25, 1952, filed herein, and subject to the approval of this Court, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that for the purposes of consideration on the merits the printed record shall consist of the portions of the transcript of record certified to this Court by the Court of Claims which have heretofore been printed in connection with the petition for a writ of certiorari plus the following additional material from such transcript of record:

1. TESTIMONY

Drake—p. 8 (beginning with the testimony of the witness), pp. 13 (beginning with examination by Mr. Kissam) through 107 (the end of the Drake testimony).

Quinn—p. 107 (through the answer to Q2), pp. 123 (beginning with examination by Mr. Kissam) through 140 the end of the Quinn testimony).

584 Clements—pp. 142 (beginning with the testimony of the witness) through 189 (the end of the Clements testimony).

Shanks—pp. 189-190 (through the answer to Q3), 194 (beginning with examination by Mr. Kissam) through 201 (the end of the Shanks testimony).

Kramer—pp. 202 (through the answer to Q4), 209 (beginning with examination by Mr. Kissam) through 242 (the end of the Kramer testimony).

Harwood—pp. 242 (through the answer to Q3), 244 (beginning with examination by Mr. Kissam) through 277 (the end of the Harwood testimony).

Rocke—Jt. 12 through 107 (the first five lines), 112 (beginning with the marking of Pltffs' Jt. Ex. 4 for Id.) through 135 (the end of the Rocke testimony).

Ramme—Jt. 135-164.

Crawfurd—Jt. 164-180, 184-202.

Perrine—Jt. 203-240.

Drake—Jt. 245-248 (through line 13).

Root—Jt. 303 (beginning with the testimony of the witness) through 332.

Casey—Jt. 333 (beginning with the testimony of the witness) through 401, 403 (beginning with the resumed cross-examination by Mr. Kissam) through 444 (down to four lines from the bottom), 449 (beginning with the redirect examination by Mr. Barnes) through 451.

Marshall—Jt. 451 (beginning with the testimony of the witness) through 468 (the end of the Marshall testimony).

2. Exhibits

Plaintiffs' Jt. Ex. 3, the so-called Casey letter.

Plaintiffs' Jt. Exs. 9, 10, 11 and 12 for identification, being an exchange of correspondence among Messrs. Cravath, Swaine & Moore, Kendall M. Barnes, Esq., and Leo T. Kissam, Esq., relating to the Orange Plan and the production of subsidiary plans referred to in that Plan.

Defendant's Jt. Ex. 1, being a release given by the Government to Caltex (Philippines), Inc., relating to Pandacan stocks.

Defendant's Jt. Ex. 5, being the Orange Plan, limited to the title page, page 16 [par. 20(a) and (b)], pages
585 17, 18, 142, 177 and 177A—all references being to the penciled pagination at the lower right-hand corner of the page.

It is further stipulated and agreed that any of the parties may refer in their briefs and argument to the entire transcript of record certified to this Court by the Court of Claims, including any part thereof which has not been printed.

PHILIP B. PERLMAN,
Solicitor General.

ALBERT R. CONNELLY,
Counsel for Respondents Standard-Vacuum Oil Company and The Shell Company of Philippine Islands Limited.

LEO T. KISSAM,
Counsel for Respondent Caltex (Philippines), Inc.

Supreme Court of the United States of America—October Term 1952 No. 16. The United States of America, Petitioner vs. Caltex (Philippines), Incorporated, The Shell Company of Philippine Islands, Limited and Standard-Vacuum Oil Co. Filed February 23, 1952.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1952—219778 #1

Office - Supreme Court, U. S.
FILED
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16

NO. 913

In the Supreme Court of the United States

OCTOBER TERM, 1951

THE UNITED STATES, *Petitioner*

v.

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS, LTD., AND STANDARD-VACUUM OIL CO.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

may be destroyed without liability because their destruction was an incident of battle, and cases where the owner of property destroyed must be compensated is somewhat less than clear"; (R. 53). To differentiate between the destruction of property in the instant case and the losses which have been held noncompensable in related circumstances is to draw a distinction unsupportable by reason.

The large scale "scorched earth" tactics which belligerent nations have employed even within their own territories [8] warn against exalting principles of private equity into rigid constitutional rights to compensation which will not take into account governmental ability to pay. Property destroyed to prevent its imminent capture by an enemy is indistinguishable from property destroyed in the course of combat. Thus, the oil terminals here involved might have been destroyed by the Japanese while pressing their attack on the area. If they had been captured intact by the Japanese, it would have been incumbent upon our armed forces to destroy them in Japanese hands as soon as possible. The Japanese might have destroyed them to prevent recapture by our forces, or they might have been leveled by our own bombardment in liberating the area.

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[8] Examples are Russia during the Napoleonic and German invasions, and the Netherlands upon the Japanese invasion of the East Indies.

Destruction in any of these circumstances clearly would not be compensable under the Fifth Amendment. The fact that such destruction occurs shortly before it might otherwise be captured or destroyed—at a time when such destruction is more thorough and detrimental to the enemy and safer for our own people—does not create a right to compensation for property which would in any event be lost to the owner.

Congress, in the Philippine Rehabilitation Act of 1946 (60 Stat. 128, 129), authorized the payment of compensation for the destruction of, or damage to, property in the Philippines during World War II resulting from, *inter alia*, "action taken by or at the request of the military, naval, or air forces of the United States to prevent such property from coming into the possession of the enemy." At the same time, Congress made clear its view that such compensation is a matter of grace, rather than of constitutional right, by limiting the amounts of such compensation as prescribed in the last proviso of Section 102(a)[9] and in proportion to the funds appropriated for all Philippine property claims. The historical background for the view that compensation in the circumstances of the present case "is a matter of bounty rather than of strict

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[9] "*Provided further*, That in case the aggregate amount of the claims which would be payable to any one claimant under the foregoing provisions exceeds $500, the aggregate amount of the claims approved in favor of such claimant shall be reduced by 25 per centum of the excess over $500."

legal right" (Presidential Veto Message, Cong. Globe, 42d Cong., 2d Sess., Part V, p. 4155) is recounted in the Court's opinion in the *Pacific Railroad* case, 120 U.S. at 235-239.

It is also significant that, under international law, losses, such as those involved in this case, resulting from legitimate military operations generally create no right to compensation. Borchard; *Diplomatic Protection of Citizens Abroad* (1915), pp. 256-258, 264-265; 2 Whiteman, *Damages in International Law* (1937), pp. 1429 *et seq.*

3. Decisions involving the destruction or confiscation of property and property values without compensation in order to safeguard other legitimate interests of the Nation and the community also present persuasive analogies. The right of the United States to destroy property in the reasonable exercise of judgment on the field of battle is certainly no less than the right to inflict losses upon private citizens in the exercise of these other governmental powers.

The destruction of a house to prevent the spread of fire has been held not to require the payment of compensation. *Bowditch* v. *Boston*, 101 U.S. 16. Under the police power "the State may order the destruction of a house falling to decay or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities." *Lawton* v. *Steele*, 152

U.S. 133, 136. The owner of valuable cedar trees has been required to destroy them to prevent the spread of cedar rust to apple trees. *Miller* v. *Schoene*, 276 U.S. 272.

Similarly, since "acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may impair its use, are universally held not to be a taking," the blocking of access to a private person's property through the construction of a tunnel is not compensable, notwithstanding the special injury to a particular person. *Transportation Company* v. *Chicago*, 99 U.S. 635, 642. Destruction of valuable contract rights as a consequence of lawful government action is not a taking. *Omnia Co.* v. *United States*, 261 U.S. 502; *Mullen Benevolent Corp.* v. *United States*, 290 U.S. 89; *United States* v. *Carver*, 278 U.S. 294; *Morrisdale Coal Co.* v. *United States*, 259 U.S. 188. Confiscation of the vehicles of innocent owners where reasonably necessary to aid in law enforcement is permitted. *General Motors Corp.* v. *United States*, 286 U.S. 49; *United States* v. *Commercial Credit Co.*, 286 U.S. 63; *Van Oster* v. *Kansas*, 272 U.S. 465; *United States* v. *One Ford Coupe*, 272 U.S. 321.

4. The rationale of the decision of the Court of Claims, "that the burden to be met should be distributed among the people as uniformly as possible" and "that the public generally should bear

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Reasons for granting the writ	6
Conclusion	18

CITATIONS

Cases:

Aleutian Livestock ... Inc. v. *United States*, 96 F. Supp. 626, certiorari denied, 342 U. S. 875	11
Bowditch v. *Boston*, 101 U. S. 16	14
Bowles v. *Willingham*, 321 U. S. 503	16
Brown v. *United States*, 8 Cranch 110	11
Commers v. *United States*, 159 F. 2d 248, certiorari denied, 331 U. S. 807	17
Falbo v. *United States*, 320 U. S. 549	17
Gallagher's Steak House v. *Bowles*, 142 F. 2d 530, certiorari denied, 322 U. S. 764	16
General Motors Corp. v. *United States*, 286 U. S. 49	15
Grant v. *United States*, 1 C. Cls. 41	9
Hamilton v. *Kentucky Distilleries Co.*, 251 U. S. 146	10, 17
Hijo v. *United States*, 194 U. S. 315	11
Hirabayashi v. *United States*, 320 U. S. 81	17
Jecker v. *Montgomery*, 18 How. 110	11
Juragua Iron Co. v. *United States*, 212 U. S. 297	10
Korematsu v. *United States*, 323 U. S. 214	17
Lawton v. *Steele*, 152 U. S. 133	15
Lichter v. *United States*, 334 U. S. 742	16, 17
Marconi Wireless Co. v. *United States*, 320 U. S. 1	3
Miller v. *Schoene*, 276 U. S. 272	15
Miller v. *United States*, 11 Wall. 268	11
Mitchell v. *Harmony*, 13 How. 115	9
Morrisdale Coal Co. v. *United States*, 259 U. S. 188	15
Mullen Benevolent Corp. v. *United States*, 290 U. S. 89	15
Northern Pacific Railway Co. v. *North Dakota*, 250 U. S. 135	17
Omnia Co. v. *United States*, 261 U. S. 502	15
Oro Fino Consolidated Mines, Inc. v. *United States*, 118 C. Cls. 18, certiorari denied, 341 U. S. 948	16
Presbyterian Church v. *United States*, 53 C. Cls. 339	9
Respublica v. *Sparhawk*, 1 Dall. 357	11

Page

St. Regis Paper Co. v. *United States*, 110 C. Cls. 271, certiorari denied, 335 U. S. 815 16
Schenck v. *United States*, 249 U. S. 47 17
Selective Draft Law Cases, 245 U. S. 366 17
Shreveport Engraving Co. v. *United States*, 143 F. 2d 222, certiorari denied, 323 U. S. 749 16
Stewart & Bros. v. *Bowles*, 322 U. S. 398 16
Transportation Company v. *Chicago*, 99 U. S. 635 15
United States v. *Alcea Band of Tillamooks*, 329 U. S. 40, 341 U. S. 48 3
United States v. *Bethlehem Steel Corp.*, 315 U. S. 289 17
United States v. *Carver*, 278 U. S. 294 15
United States v. *Chemical Foundation, Inc.*, 272 U. S. 1 11
United States v. *Commercial Credit Co.*, 286 U. S. 63 15
United States v. *Esnault-Pelterie*, 299 U. S. 201 3
United States v. *One Ford Coupe*, 272 U. S. 321 15
United States v. *Irwin*, 127 U. S. 125 10
United States v. *Pacific Railroad*, 120 U. S. 227 ..... 7-9, 10, 14
Van Oster v. *Kansas*, 272 U. S. 465 15
Venus, The, 8 Cranch 253 11
Walker v. *United States*, 34 C. Cls. 345 9
White v. *Mechanics Securities Corp.*, 269 U. S. 283 11
Wiggins v. *United States*, 3 C. Cls. 412 9
Woodson v. *Deutsche Gold und Silber Scheideanstalt Vormals Roessler*, 292 U. S. 449 11
Yakus v. *United States*, 321 U. S. 414 16

CONSTITUTION AND STATUTE:

Constitution of the United States
Fifth Amendment 6, 13
Philippine Rehabilitation Act of 1946, 60 Stat. 128, 129 13

MISCELLANEOUS:

Borchard, *Diplomatic Protection of Citizens Abroad* (1915) 14
A Symposium on Labor Law in War Time (1944) 29 Ia. Law Rev. 145, *et seq.* 16
Presidential Veto Message, Cong. Globe, 42d Cong., 2d Sess., Part V, p. 4155 14
Rules of the United States Court of Claims:
Rule 38 (c) 2
2 Whiteman, *Damages in International Law* (1937) 14

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 610

THE UNITED STATES, *Petitioner*

v.

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS, LTD., AND STANDARD-VACUUM OIL CO.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment entered in this case on November 6, 1951, by the United States Court of Claims.

OPINON BELOW

The opinion of the Court of Claims (R. 44) is reported at 100 F. Supp. 970.

JURISDICTION

The judgment of the Court of Claims was entered on November 6, 1951 (R. 61). On Janu-

ary 29, 1952, the Chief Justice extended the time within which a petition for a writ of certiorari might be filed to and including February 25, 1952 (R. 62). The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTION PRESENTED

Whether the destruction during hostilities of private property of military value to prevent such property from falling into the hands of the advancing enemy is a taking for public use which requires the payment of just compensation under the Fifth Amendment.

STATEMENT

The respondent oil companies brought suit to recover just compensation for their terminal facilities in Manila which were destroyed by the United States Army in its evacuation of the area before advancing Japanese troops.[1] The Court of Claims held the Government liable and reserved determination of the exact amounts of recovery for further proceedings.[2]

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[1] Three suits were filed which were consolidated in the court below. Certain claims, in addition to those for destruction of their terminal facilities in Manila, were made and adjudicated in the court below. This petition, however, is directed solely to that portion of the judgment which relates to the oil terminal facilities at Manila.

[2] Under Rule 38(c) of the Rules of the United States Court of Claims, trials in the first instance may be limited to the issues of law and fact relating to the right of recovery, with

Four commercial oil companies maintained terminals in the Pandacan District of Manila which were of great military value for the supply and storage of petroleum products (R. 3). The terminal facilities included wharves, rail and pipe lines, pumps, storage tanks, warehouses, residences for superintendents, can factories, cans, railroad tank cars, bulk tank trucks, package trucks and loading facilities (R. 3).

The Philippines were subjected to air attacks immediately after the attack on Pearl Harbor (R. 35). On December 23, 1951, the Commanding General ordered the withdrawal of all troops on Luzon to Bataan Peninsula (R. 38). On December 25, Manila was declared an open city (R. 39). On December 26, the terminals were ordered to be prepared for demolition (R. 39-41). On December 27, representatives of the oil companies were advised that the equipment would have to be destroyed, that they would receive orders in due course pertaining to destruction, and that a demolition net-work was being laid (R. 39-40). The demolition charges and net-work were in place within two or three days (R. 39).

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determination of the amount of recovery reserved for further proceedings. In the analogous situation in patent cases, where the issues of infringement and damages are separately tried, the judgment on infringement has been reviewed on certiorari before trial of the issue of damages. *United States* v. *Esnault-Pelterie*, 299 U. S. 201; *Marconi Wireless Co.* v. *United States*, 320 U. S. 1, 47. See also *United States* v. *Alcea Band of Tillamooks*, 329 U. S. 40, 341 U. S. 48.

At about the same time, in order to perfect the authority of the Chief Engineer of the Army in the Philippines to destroy the facilities, the Deputy Chief of Staff signed letters addressed to the oil companies directing them "on telephonic or personal instructions issued to you by a designated representative of this Headquarters" "to so disable all vital parts of your plant and station as to deny their use to the enemy" (R. 46). The evidence did not establish whether or not these letters were actually delivered (R. 41). The Chief Engineer had previously prepared letters dated December 25, 1941, addressed to the oil companies, stating that the terminal facilities "are requisitioned by the U. S. Army" and "that any action deemed necessary for the destruction of this property will be handled by the U. S. Army" (R. 39). These letters were delivered to the representatives of two of the oil companies shortly after they were advised of the necessity for destruction, but the evidence did not establish whether the letters were delivered to the others (R. 40). The terminals were demolished by the Army acting upon orders of the Chief Engineer on December 31, 1941 (R. 41).[3] The Japanese were already entering Manila at that time (R. 48).

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[3] Acquisition of real property was centralized under the Department Quartermaster, and was authorized by no other echelons of command (R. 35). Demolition of property was a function of the Engineers under the comand of the Chief of Engineers (R. 35). Prior to Decemer 1, 1941, no authority

After the liberation of Manila in February 1945, representatives of the oil companies applied to the Chief Engineer for release of the site of the terminals which were then occupied by the Army, and all the land was restored during 1945 and 1946 (R. 41).[4]

The Court of Claims found that the Army requisitioned the terminal facilities on December 27, 1941, "in anticipation and for the purpose of destruction to prevent items of military value from falling into the hands of the enemy" (R. 42).[5] Although recognizing that "the only use the Army made of plaintiffs' terminal facilities following the requisition on December 27, 1941, was to destroy them" (R. 48), it held that their destruction "was a use thereof in the common defense" and a taking for that purpose which entitled the owners to just compensation (R. 54). The Chief Judge and Judge Whitaker dissented on the ground "that property destroyed in actual battle by either side does not call for compensation" (R. 58), "that the destruction was due to battle conditions" and,

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to make war-time requisition of either the use or title of private property had been delegated to anyone by the Commanding General (R. 35).

[4] No claims for compensation are made by the oil companies for the use of this land.

[5] No significance can be attached to the finding that the facilities were "requisitioned" in view of the court's express disclaimer of reliance on the requistioning statute "as it is apparent that no effort was made to comply with that Act" (R. 47).

therefore, was not "taken for public use within the meaning of the Fifth Amendment" (R. 61).

REASONS FOR GRANTING THE WRIT

The instant case presents the question of whether the Fifth Amendment imposes upon the United States an obligation to pay for property of military value which was destroyed by the United States to prevent its imminent capture by an advancing enemy. This question has not been recently considered by this Court, nor has this Court ever squarely passed upon it. Its importance in settling the scope of the war-time liabilities of the United States is readily apparent. It has been estimated that the present cases alone involve claims of more than six million dollars. There are twenty-one other cases now pending in the Court of Claims involving 131 claims of takings based on the loss or destruction of property in the Philippines during 1941 in comparable circumstances. Some twenty additional suits have been filed grounded upon takings in the Philippines during the same period. Although the facts alleged do not make clear the nature of the appropriation charged, it is probable that many, if not all, involve the same theory as the present case. Moreover, no one can foresee the extent to which military necessity in some future conflict may compel similar destruction of property by the United States. Under the decision below, there would be a rigid right to full compensation for such property, regardless of

the Nation's ability to pay. If, as we contend, destruction arising out of military necessity is not compensable as a matter of right, then Congress will remain free to recognize whatever equities are involved to the extent of its judgment as to the Nation's ability to pay.

1. In holding that the destruction of the Pandacan terminal facilities for the purpose of denying their use to the Japanese was a taking within the meaning of the Fifth Amendment, the Court of Claims expressly declined to follow the reasoning of this Court in the leading case of *United States* v. *Pacific Railroad*, 120 U.S. 227.

In that case the Government, to aid prosecution of the Civil War, rebuilt several railroad bridges which had been destroyed by the Federal Army to obstruct the advance of the enemy. Subsequently, the United States, in order to reimburse itself for the reconstructed bridges, withheld payment of an indebtedness to the railroad for which the railroad brought suit. The Court first reasoned that the railroad was not entitled to compensation for the bridges destroyed (p. 234):

> The destruction or injury of private property in battle, or in the bombardment of cities and towns, and in many other ways in the war, had to be borne by the sufferers alone as one of its consequences. Whatever would embarrass or impede the advance of the enemy,

> as the breaking up of roads, or the burning of bridges, or would cripple and defeat him, as destroying his means of subsistence, were lawfully ordered by the commanding general. Indeed, it was his imperative duty to direct their destruction. The necessities of the war called for and justified this. The safety of the state in such cases overrides all considerations of private loss.[6]

It then held that, conversely, the Government could not recover for private property values created in military operations (p. 239):

> While the government cannot be charged for injuries to, or destruction of, private property caused by military operations of armies in the field, or measures taken for their safety and efficiency, the converse of the doctrine is equally true, that private parties cannot be charged for works constructed on their lands by the government to further the operations of its armies. Military necessity will justify the destruction of property, but will not com-

[6] The Court drew a distinction between property destroyed for military purposes and property taken for use by the Army, pointing out the "where property of loyal citizens is taken for the service of our armies, such as vessels, steamboats, and the like, for the transport of troops and munitions of war; or buildings to be used as storehouses and places of deposit of war material, or to house soldiers or take care of the sick * * * it has been the practice of the government to make compensation for the property taken." (p. 239).

> pel private parties to erect on their own lands works needed by the government, or to pay for such works when erected by the government. The cost of building and repairing roads and bridges to facilitate the movements of troops, or the transportation of supplies and munitions of war, must, therefore, be borne by the government.

Thus, although not called upon to decide the question, the Court reached the result in the *Pacific Railroad* case on the basis of its view that the Government was not liable for private property destroyed. As the opinion stated, "The court will leave the parties where the war and military operations of the government left them" (p. 240).

The Court of Claims declined to follow the deliberately considered rationale of this Court and reached an opposite result in reliance on its own decisions in *Grant* v. *United States,* 1 C. Cls. 41, and *Wiggins* v. *United States,* 3 C. Cls. 412, and a passing observation in *Mitchell* v. *Harmony,* 13 How. 115, 133, all of which antedated the decision in the *Pacific Railroad* case. In so doing, it disregarded its own later decisions in *Presbyterian Church* v. *United States,* 33 C. Cls. 339, and *Walker* v. *United States,* 34 C. Cls. 345, both of which drew the same distinction, between property taken for beneficial use and property destroyed, which this

Court had drawn earlier in the *Pacific Railroad* case.[7]

The present state of judicial authority on the important question of the Government's liability under the Fifth Amendment in these circumstances warrants review by this Court.

2. Moreover, rulings denying compensation for losses suffered in other circumstances through destruction or seizure as the result of hostilities suggest that the decision below is incorrect. Destruction by the Army in occupied enemy territory of the property of an American corporation in order to preserve the health of the troops does not give rise to a claim for compensation. *Juragua Iron Co.* v. *United States*, 212 U.S. 297. Requiring wagon trains to remain with the armed forces as a matter of military necessity with the result that the animals died from overwork and starvation "cannot be construed as a seizure and impressment of their property into the public service." *United States* v. *Irwin*, 127 U.S. 125, 130. Recovery was limited to the actual use of the animals in hauling government trains. The Court of Claims has itself held that livestock destroyed as a result of an Army order for the evacuation of the Aleutians

[7] The decision in the *Pacific Railroad* case has been referred to by this Court for the view that the Government is not liable for the destruction of private property in necessary military operations in *Juragua Iron Co.* v. *United States*, 212 U. S. 297, 307, and *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 155.

were not "taken" under the Fifth Amendment. *Aleutian Livestock Company, Inc.* v. *United States,* 96 F. Supp. 626, certiorari denied, 342 U.S. 875. Cf. *Respublica* v. *Sparhawk,* 1 Dall. 357.

The property of a citizen of the United States domiciled in a foreign country which was shipped before knowledge of war with that country has been held confiscable by the United States upon capture. *The Venus,* 8 Cranch 253. Permission from the owners of a vessel for its use in hostile enterprises against the United States renders the vessel subject to confiscation because of the "necessity for guarding the public safety." *Jecker* v. *Montgomery,* 18 How. 110, 119.

In time of war, as legitimate means of harassing the enemy, the United States can confiscate or destroy all enemy property within its reach without compensation. *Brown* v. *United States,* 8 Cranch 110, 129; *Miller* v. *United States,* 11 Wall. 268, 305; *White* v. *Mechanics Securities Corp.,* 269 U.S. 283; *United States* v. *Chemical Foundation, Inc.,* 272 U.S. 1; *Woodson* v. *Deutsche Gold Und Silber Scheideanstalt Vormals Roessler,* 292 U.S. 449. Use of the vessel of an enemy corporation has been held not compensable under the Constitution because it was a seizure "for purposes of war, and not for any purposes of gain," "an act of war occurring within the limits of military operations." *Hijo* v. *United States,* 194 U.S. 315, 322, 323.

Even the majority opinion below recognized "that the distinction between cases where property

Miscellaneous—Continued

	Page
19 Cong. Rec.:	
p. 32	45
p. 241	45
21 Cong. Rec.:	
p. 111	45
p. 3413	45
p. 6326	45
23 Cong. Rec.:	
p. 26	45
p. 234	45
25 Cong. Rec.:	
p. 329	45
p. 2184	45
91 Cong. Rec.:	
p. 10788	51
p. 10828	51
p. 11036	51
p. 11463	51
p. 11470	51
92 Cong. Rec.:	
p. 3392	51
pp. 3435–3450	51
p. 3676	51
p. 3773	51
p. 3987	51
p. 4038	51
Cong. Rec., July 5, 1952, pp. 9588–9591	54
Davis, *Elements of International Law* (1903), p. 352, note 2	57
Fraleigh, *Compensation for War Damage to American Property in Allied Countries*, 41 Am. J. Intl Law 748	53
Grotius, *De Jure Belli Ac Pacis Libri Tres, The Classics of International Law No. 3*, Vol. II, (1925 ed.):	
Bk. II, ch. XIV, Sec. VII	55
Bk. III, ch. XX, Sec. VIII	55
V Hackworth, *Digest of International Law* (1943), pp. 701–702	60
VI Hackworth, *Digest of International Law* (1943), Sec. 609	55
Halleck, *International Law* (4th Ed. 1908):	
Vol. I, p. 520, Note 1	55
Vol. II, p. 56	55–56
Vol. II, pp. 70–71	55
H. Rep. No. 1921, 79th Cong., 2d Sess	51, 52
H. Rep. No. 1957, 79th Cong., 2d Sess	51
H. Rep. No. 2500, 51st Cong., 1st Sess	45
H. Rep. No. 134, 43d Cong., 2d Sess., p. 296	44
Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, April 24, 1863, par. 15	55

Miscellaneous—Continued

	Page
Lawrence Report, H. Rep. No. 362, 43rd Cong., 1st Sess., as revised and enlarged, H. Rep. No. 134, 43rd Cong., 2d Sess.:	
pp. 205–297	39
pp. 281–297	16, 40
p. 294	40
p. 296, note 175	44
IV Moore, *International Arbitrations* (1898):	
p. 3674	58
p. 3683	58
p. 3684	58
pp. 3703–3704	59
pp. 3705–3706	58
pp. 3718–3720	58
pp. 3734–3735	58
VI Moore, *International Law Digest* (1906), p. 883	62
I Nichols, *Law of Eminent Domain* (3d Ed.):	
Sec. 1.43	25
Sec. 1.44	25
Sec. 1.44 [7]	25, 56, 57
II Oppenheim, *International Law* (2d Ed. 1912) Sec. 102, pp. 446–449	55
Report of War Claims Comm., H. Doc. No. 580, 81st Cong., 2d Sess	54
Robinson, *War Damage Compensation and Restitution in Foreign Countries*, 16 Law & Contemp. Prob. 347	53
Rules of the U. S. Court of Claims, Rule 38 (c)	2
Schein, *War Damage Compensation Through Rehabilitation: The Philippine War Damage Commission*, 16 Law. & Contemp. Prob. 549	52
S. 161, 42d Cong	45
S. 490, 42d Cong	47
Sen. Doc. No. 25, 58th Cong., 2d Sess., pp. 6–7	59
Sen. Ex. Doc. No. 85, 42nd Cong., 2d Sess	43
Sen. Ex. Doc. No. 86, 42nd Cong., 2d Sess	43
Sen. Ex. Doc. No. 33, 42nd Cong., 3rd Sess	43, 47
Sen. Ex. Doc. No. 42, 42nd Cong., 3rd Sess	15, 43, 45
S. J. Res. 171, 82d Cong., 2d Sess	54
S. Rep. No. 112, 39th Cong., 2d Sess	44
S. Rep. No. 69, 41st Cong., 2d Sess	44
S. Rep. No. 9, 42nd Cong., 2d Sess	44
S. Rep. No. 50, 42nd Cong., 2d Sess	45
S. Rep. No. 412, 42nd Cong., 3rd Sess	44
S. Rep. No. 144, 44th Cong., 1st Sess., Parts 1 and 2	45
S. Rep. No. 710, 47th Cong., 1st Sess	45
S. Rep. No. 22, 48th Cong., 1st Sess	49
S. Rep. No. 40, 48th Cong., 1st Sess	49
S. Rep. No. 99, 48th Cong., 1st Sess	45

the cost of acquisition" (R. 53-54), is not a constitutional principle and does not meet the practical exigencies of conducting war. The cases are legion in which war regulations deemed necessary by Congress have had an uneven impact upon the people.

Non-compensable losses are endured by many segments of the nation as a result of the total mobilization of effort, manpower and of property required to win the war. Cf. *Lichter* v. *United States*, 334 U.S. 742, 755-765, 767. Many business enterprises have had to curtail and even cease operations because deprived of needed materials by priority and allocation orders. See *Steuart & Bro.* v. *Bowles*, 322 U.S. 398; *Gallagher's Steak House* v. *Bowles*, 142 F. 2d 530 (C.A. 2), certiorari denied, 322 U.S. 764; *Shreveport Engraving Co.* v. *United States*, 143 F. 2d 222 (C.A. 5), certiorari denied, 323 U.S. 749; *St. Regis Paper Company* v. *United States*, 110 C. Cls. 271, certiorari denied, 335 U.S. 815; *Oro Fino Consolidated Mines, Inc.* v. *United States*, 118 C. Cls. 18, certiorari denied, 341 U.S. 948. Price ceilings have been imposed on every commodity bought and sold. *Yakus* v. *United States*, 321 U.S. 414; *Bowles* v. *Willingham*, 321 U.S. 503. Restrictions have been placed on wages, the right to strike, and collective bargaining. See *A Symposium on Labor Law in War Time* (1944) 29 Ia. Law Rev. 145, *et seq.* Excessive profits have been recaptured. *Lichter* v. *United States*, 334 U.S. 742.

The Government conscripted millions of citizens into the armed services, divorcing them from their normal pursuits, separating them from their families, and exposing them to the hardship and hazards of combat, including possible injury and loss of life. *Falbo* v. *United States*, 320 U.S. 549; *Selective Draft Law Cases*, 245 U.S. 366; *cf. Commers* v. *United States*, 159 F. 2d 248 (C.A. 9), certiorari denied, 331 U.S. 807.[10]

Each of these systems of regulation or control frequently imposed serious deprivations, hardship, or reduction in property values on those subject to its reach, but these losses had to be borne without compensation, as part of the national war effort. It is in nature of modern war that few can count confidently upon emerging unscathed. "In total war it is necessary that a civilian make sacrifices of his property and profits with at least the same fortitude as that with which a drafted soldier makes his traditional sacrifices of comfort, security and life itself." *Lichter* v. *United States*, 334 U.S. at 754. See also *United States* v. *Bethlehem Steel Corp.*, 315 U.S. 289, 305.

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[10] To further prosecution of the war, this Court has also sanctioned the restriction of the personal freedom of American citizens by curfew orders and the designation of areas of exclusion (*Hirabayashi* v. *United States*, 320 U. S. 81; *Korematsu* v. *United States*, 323 U. S. 214), the restriction of freedom of speech in a manner that would be unwarranted in time of peace (*Schenck* v. *United States*, 249 U. S. 47), the prohibition of the sale of liquor (*Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146), and Government operation of the railroads (*Northern Pacific Railway Co.* v. *North Dakota*, 250 U. S. 135).

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY, 1952.

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No. 16

In the Supreme Court of the United States

OCTOBER TERM, 1952

THE UNITED STATES OF AMERICA, PETITIONER

v.

CALTEX (PHILIPPINES), INCORPORATED, THE SHELL COMPANY OF PHILIPPINE ISLANDS, LIMITED AND STANDARD-VACUUM OIL CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statement	2
Summary of Argument	6
Argument:	
The destruction during hostilities of private property of military value, to prevent such property from falling into the hands of the advancing enemy, is not a taking for public use which requires the payment of just compensation under the Fifth Amendment	11
A. The United States cannot assume a rigid and unlimited liability for property which it destroys to deny its use to an enemy	12
B. Even as an original matter, such destruction would not constitute a taking of property for public use within the meaning of the Fifth Amendment	20
C. This Court has held that the Fifth Amendment does not require payment of compensation for property destroyed by the United States to deny its use to the enemy or otherwise to protect American forces	26
D. The repeated refusal of Congress to pay for property so destroyed is persuasive evidence that the Fifth Amendment does not require such payment of compensation	38
E. No accepted principle or practice in international law suggests that compensation for the destruction of property to deny its use to the enemy should be required under the Fifth Amendment	54
Conclusion	63
Appendix	64

CITATIONS

Cases:	
Aitken v. *Village of Wells River*, 70 Vt. 308	24
American Print Works v. *Lawrence*, 23 N. J. L. 590	24
Bowditch v. *Boston*, 101 U. S. 16	23
Bowles v. *Willingham*, 321 U. S. 503	22
Carolene Products Co. v. *United States*, 323 U. S. 18	21
C. B. & Q. Railway v. *Drainage Comm'rs*, 200 U. S. 561	21

223691—52——1

Cases—Continued

	Page
Commers v. *United States*, 159 F. 2d 248, certiorari denied, 331 U. S. 807	23
County of Mobile v. *Kimball*, 102 U. S. 691	21
Dennis v. *United States*, 341 U. S. 494	15
Falbo v. *United States*, 320 U. S. 549	23
Field v. *City of Des Moines*, 39 Iowa 575	24
Ford v. *Surget*, 97 U. S. 594	25
General Motors Acceptance Corp. v. *United States*, 286 U. S. 49	21
Grant v. *United States:*	
1 C. Cls. 41	26, 27, 32
2 C. Cls. 551	16
Hamilton v. *Kentucky Distilleries*, 251 U. S. 146	22
Harrison v. *Wisdom*, 54 Tenn. 99	24
Heflebower v. *United States*, 21 C. Cls. 225	28
Hirabayashi v. *United States*, 320 U. S. 81	23
Houck v. *Little River Drainage District*, 239 U. S. 254	21
Juragua Iron Co. v. *United States*, 42 C. Cls. 99, affirmed, 212 U. S. 297	9, 10, 26, 35–37, 38, 58, 59
Korematsu v. *United States*, 323 U. S. 214	23
Lawton v. *Steele*, 152 U. S. 133	21, 24
Lichter v. *United States*, 334 U. S. 742	22, 26
McDonald v. *City of Red Wing*, 13 Minn. 38	24
Miller v. *Schoene*, 276 U. S. 272	8, 21, 24
Miller v. *United States*, 11 Wall. 268	22
Mitchell v. *Harmony*, 13 How. 115	13, 25, 26, 27, 32, 37
Mugler v. *Kansas*, 123 U. S. 623	21
North American Storage Co. v. *Chicago*, 211 U. S. 306	21, 25
Oro Fino Cons. Mines, Inc. v. *United States*, 118 C. Cls. 18, certiorari denied, 341 U. S. 948	23
Parham v. *The Justices*, 9 Ga. 341	24
Peabody v. *United States*, 231 U. S. 530	22
Perrin v. *United States*, 4 C. Cls. 543, affirmed, 12 Wall. 315	13
Portsmouth Harbor Land & Hotel Co. v. *United States*, 260 U. S. 327	22
Powell v. *Pennsylvania*, 127 U. S. 678	21
Presbyterian Church v. *United States*, 33 C. Cls. 339	28
Respyblica v. *Sparhawk*, 1 Dall. (Pa.) 357	24
Jacob Ruppert v. *Caffey*, 251 U. S. 264	22
Russell v. *The Mayor*, 2 Denio (N. Y.) 461	24
Russian Volunteer Fleet v. *United States* 282 U. S. 481	53
St. Regis Paper Co. v. *United States*, 110 C. Cls. 271, certiorari denied, 335 U. S. 815	23
Selective Draft Law Cases, 245 U. S. 366	23
Stewart & Bro. v. *Bowles*, 322 U. S. 398	23
United States v. *Bethlehem Steel Corp.*, 315 U. S. 289	26
United States v. *Chemical Foundation, Inc.*, 272 U. S. 1	22

Cases—Continued Page

United States v. *One Ford Coupe*, 272 U. S. 321 21
United States v. *Pacific Railroad*, 120 U. S. 227 ..... 9, 17, 25, 26, 29-34, 38, 39, 44, 63
Walker v. *United States*, 34 C. Cls. 345 28
Wallace v. *City of Richmond*, 94 Va. 204 24
Wiggins v. *United States*, 3 C. Cls. 412 ..... 26, 28, 32
Yakus v. *United States*, 321 U. S. 414 22
Youngstown Sheet & Tube Co. v. *Sawyer*, 343 U. S. 579 38

Constitution, Public and Private Laws and Convention:
U. S. Constitution, Fifth Amendment 6, 7, 11, 14
Act of April 9, 1816, 3 Stat. 261:
Sec. 5 41
Sec. 9 41
Act of March 3, 1817, 3 Stat. 397, Sec. 9 42
Act of July 4, 1864, 13 Stat. 381 ..... 28, 42, 43
Act of June 22, 1874, 18 Stat. 604 48
Act of March 3, 1883, 22 Stat. 485 ..... 28, 48
Act for Relief of Josiah O. Armes, 14 Stat. 617 44
Act for Relief of East Tennessee University, 18 Stat. 604 48
Act for Relief of University of Kentucky, 16 Stat. 678 48
Act for Relief of William H. Washington, 6 Stat. 151 42
Contract Settlement Act of 1944, 58 Stat. 649, 41 U. S. C. 117, Sec. 17 53
Federal Tort Claims Act of 1946, 28 U. S. C. 2680 51
Foreign Claims Act, 31 U. S. C. 224d 51
Hague Convention, IV of 1907, Respecting the Laws and Customs of War on Land, 36 Stat. 2277, Art. 23 (g) 37
Lucas Act of 1946, 60 Stat. 902, 41 U. S. C. 106, note 54
Marine War Risk Insurance Acts, June 29, 1936, 49 Stat. 1985, as amended, 54 Stat. 689; 56 Stat. 140; 56 Stat. 214; 57 Stat. 47; 58 Stat. 216; 46 U. S. C. 1128 53
Military Claims Act, 31 U. S. C. 223b 51
Philippine Rehabilitation Act of 1946, 60 Stat. 128, 50 U. S. C. App. 1751, *et. seq* 51
Sec. 102 52
Sec. 104 (c) 19
Requisition of Military Materials Act of Oct. 16, 1941, 55 Stat. 742–743, as amended, 50 U. S. C. App. 721–724 5
War Claims Act of July 3, 1948, 62 Stat. 1245, 50 U. S. C. App., Supp. V, 2007, Sec. 8 54
War Damage Insurance Act of 1942, 56 Stat. 174, 15 U. S. C. 606 b–2 53
War Damage Act, 1943, 6 & 7 Geo. VI, c. 2d, Sec. 20, Part I 19

Miscellaneous:
American State Papers, Class IX, Claims:
No. 243, p. 424 40
No. 266, p. 446 42
No. 412, p. 590 42
No. 536, pp. 752–753 40

Miscellaneous—Continued

American State Papers, Class IX, Claims—Continued Page
No. 587, p. 835 ... 40
The Army Air Forces in World War II:
Vol. II ... 14
Vol. III ... 15
Bill for Relief of J. Milton Best ... 43, 45
Bill for Relief of East Tennessee University ... 43, 47
Bill for Relief of Thomas B. Wallace ... 43
Bill for Relief for Destruction of Manchester, Ky. Salt-Works ... 43, 45
Bill for Relief of William Hardman ... 50
Borchard, *Diplomatic Protection of Citizens Abroad* (1915), pp. 264–265 ... 57
Bouvier, *Law Dictionary* (Rawle's Third Revision), p. 195 ... 55
Brooks, *A Survey of Progress Towards Payment of War Damage Compensation in Europe*, 1 Intl. L. Q. 301 ... 53
Cong. Globe, 38th Cong., 1st Sess.:
p. 127 ... 43
pp. 164–168 ... 43
p. 261 ... 43
p. 282 ... 43
pp. 909–920 ... 43
pp. 924–926 ... 43
p. 1010 ... 43
p. 2774 ... 43
p. 2778 ... 43
p. 2781 ... 43
p. 3188 ... 43
pp. 3418–3420 ... 43
p. 3499 ... 43
p. 3513 ... 43
p. 3544 ... 43
p. 3547 ... 43
Cong. Globe, 41st Cong., 2d Sess.:
p. 1947 ... 44
pp. 2986–2987 ... 44
p. 4587 ... 44
Cong. Globe, 41st Cong., 3rd Sess.:
pp. 62–63 ... 44
pp. 97–102 ... 44
pp. 165–169 ... 44
pp. 295–304 ... 44
pp. 311–319 ... 44
p. 1934 ... 44
Cong. Globe, 42nd Cong., 1st Sess., pp. 22–84 ... 44
Cong. Globe, 42nd Cong., 2nd Sess.:
p. 120 ... 44
p. 1176 ... 45
pp. 2252–2253 ... 44

Miscellaneous—Continued
Cong. Globe, 42nd Cong., 2nd Sess.—Continued Page
p. 2258 45
p. 2259 45
p. 2302 45
p. 3148 44, 45
pp. 3621–3624 44
p. 3648 44
p. 3696 44
pp. 4155–4156 44
Cong. Globe, 42nd Cong., 3rd Sess.:
pp. 694–697 45
p. 722 45
p. 897 45
p. 919 45
p. 929 45
p. 930 45
p. 949 45
p. 1164 44
p. 1288 49
p. 1309 49
p. 1680 44
2 Cong. Rec.:
p. 10 44
p. 29 44
pp. 1317–1319 48
p. 1665 44
pp. 5200–5201 48
4 Cong. Rec.:
p. 4364 45
p. 4467 45
6 Cong. Rec.:
p. 58 45
p. 238 45
13 Cong. Rec.:
p. 51 45
pp. 3147–3167 48
pp. 3184–3206 48
14 Cong. Rec.:
pp. 908–912 48
pp. 946–953 48
p. 3660 48
pp. 3672–3673 48
15 Cong. Rec.:
p. 11 45
p. 759 45
17 Cong. Rec.:
p. 1033 45
p. 3176 45

Miscellaneous—Continued	Page
S. Rep. No. 224, 57th Cong., 1st Sess.	51
S. Rep. No. 755, 79th Cong., 1st Sess.	51
Spaight, *War Rights on Land* (1911 Ed.):	
pp. 111 ff.	55
pp. 510–512	55
A *Symposium on Labor Law in War-Time* (1944), 29 Iowa L. Rev. 145, *et seq.*	23
Taylor, *International Public Law* (1901):	
pp. 556–557	55, 57
pp. 701–704	55
II U. S. Foreign Rel. (1926), pp. 308–335	60
Vattel, *Law of Nations*, Bk. III, c. XV, Sec. 232	55
War Department Basic Field Manual, *Rules of Land Warfare* (1940 ed.) (F. M. 27–10), par. 314	56
II Wharton, *International Law Digest* (2nd Ed.), p. 587	57
II Whiteman, *Damages in International Law* (1937), p. 1429	56
Wolff, *Jus Jentium Methodo Scientifica Pertractatum*, § 830, *The Classics of International Law*, No. 13, Vol. II, (1934 ed.)	56
Wormser, *Collection of International War Damage Claims* (1944), pp. 157–158	57

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (IR. 44) is reported at 120 C. Cls. 518.

JURISDICTION

The judgment of the Court of Claims was entered on November 6, 1951 (IR. 61). The petition for a writ of certiorari was filed on February 23, 1952, and was granted on May 26, 1952 (IR. 65). The jurisdiction of this Court rests upon 28 U. S. C. 1255.

QUESTION PRESENTED

Whether the destruction during hostilities of private property of military value, to prevent such property from falling into the hands of the advancing enemy, is a taking for public use which requires the payment of just compensation under the Fifth Amendment.

STATEMENT

The respondent oil companies brought suit to recover just compensation for their terminal facilities in Manila, Philippine Islands, which were destroyed by the United States Army in its evacuation of the area before advancing Japanese troops.[1] The Court of Claims held the Government liable and reserved determination of the exact amounts of recovery for further proceedings.[2]

The pertinent facts may be summarized as follows: Four commercial oil companies maintained terminals in the Pandacan District of Manila, which were of great military value for the supply and storage of petroleum products (IR. 3).

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[1] Three suits were filed which were consolidated in the court below. Certain claims, in addition to those for destruction of their terminal facilities in Manila, were made and adjudicated in the court below. The writ of certiorari, however, is directed solely to that portion of the judgment which relates to the oil terminal facilities at Manila.

[2] Under Rule 38 (c) of the Rules of the United States Court of Claims, trials in the first instance may be limited to the issues of law and fact relating to the right of recovery, with determination of the amount of recovery reserved for further proceedings.

The terminal facilities included wharves, rail and pipe lines, pumps, storage tanks, warehouses, residences for superintendents, can factories, cans, railroad tank cars, bulk tank trucks, package trucks and loading facilities (IR. 3).

The Philippines were subjected to enemy air attacks immediately after the attack on Pearl Harbor (IR. 35). On December 23, 1941, the Commanding General ordered the withdrawal of all troops on Luzon to Bataan Peninsula (IR. 38). On December 25, Manila was declared an open city (IR. 39). On December 26, the terminals were ordered to be prepared for demolition at a date then undetermined (IR. 39). On December 27, representatives of the oil companies were advised that the equipment would have to be destroyed, that they would receive orders in due course pertaining to destruction, and that a demolition net-work was being laid (IR. 39–40). The demolition charges and net-work were in place within two or three days (IR. 39).

At about the same time, in order to perfect the authority of the Chief Engineer of the Army in the Philippines to destroy the facilities, the Deputy Chief of Staff signed letters addressed to the oil companies directing them "on telephonic or personal instructions issued to you by a designated representative of this Headquarters" "to so disable all vital parts of your plant and station as to deny their use to the enemy (IR. 40).

The evidence did not establish whether or not these letters were actually delivered (IR. 41). The Chief Engineer had previously prepared letters dated December 25, 1941, addressed to the oil companies, stating that the terminal facilities "are requisitioned by the United States Army" and "that any action deemed necessary for the destruction of this property will be handled by the United States Army" (IR. 39). These letters were delivered to the representatives of two of the oil companies on or about December 27, shortly after they were advised of the necessity for destruction, but the evidence did not establish whether the letters were delivered to the others (IR. 39, 40). Because two or more of the representatives of the oil companies protested having anything to do with demolition, in view of the probability of having to answer to the Japanese (IR. 40), the terminals were demolished by the Army acting upon orders of the Chief Engineer on December 31, 1941 (IR. 41).[3] The Japanese were already entering Manila at that time (IR. 48).

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[3] Acquisition of real property was centralized under the Department Quartermaster and was authorized by no other echelons of command (IR. 35). Demolition of property was a function of the Engineers under the command of the Chief of Engineers (IR. 35). Prior to December 1, 1941, no authority to make war-time requisition of either the use of or title to private property had been delegated to anyone by the Commanding General (IR. 35).

After the liberation of Manila in February 1945, representatives of the oil companies applied to the Chief Engineer for release of the site of the terminals which was then occupied by the Army, and all the land was restored during 1945 and 1946 without a formal reconveyance (IR. 41; II R. 276–278, 279–281, 282–283).[4]

The Court of Claims found that the Army requisitioned the terminal facilities on December 27, 1941, "in anticipation and for the purpose of destruction to prevent items of military value from falling into the hands of the enemy" (IR. 41, 42).[5] Although recognizing that "the only use the Army made of plaintiffs' terminal facilities following the requisition on December 27, 1941, was to destroy them" (IR. 48), it held that their destruction "was a use thereof in the common defense" and a taking which entitled the owners to just compensation (IR. 54). The Chief Judge and Judge Whitaker dissented on the ground "that property destroyed in actual battle by either side does not call for compensation" (IR. 58), "that the destruction was due to

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[4] No claims for compensation are made by the oil companies for the use of this land.

[5] No significance can be attached to the finding that the facilities were "requisitioned" in view of the court's express disclaimer of reliance on the Requisition of Military Materials Act of Oct. 16, 1941, 55 Stat. 742–743, as amended, 50 U. S. C. App. 721–724, "as it is apparent that no effort was made to comply with that Act" (IR. 47).

battle conditions" and, therefore, was not "taken for public use within the meaning of the Fifth Amendment" (IR. 61).

SUMMARY OF ARGUMENT

The court below has erroneously held that the destruction of property of military value to deny its use to an advancing enemy is a taking of property for public use for which the Fifth Amendment requires payment of compensation by the United States. In so holding, the court below has imposed upon the United States a rigid obligation for payment of war losses such as no government dares to assume. Its decision is in conflict with controlling decisions of this Court, the long-standing view of Congress that such destructions are not compensable as a matter of right, and the trend in international law to deny liability for such losses.

A. It is conceded that the United States is not required by the Fifth Amendment to compensate its nationals or others for property destroyed or damaged as an incident to battle. If the respondent's oil terminals had been destroyed by the advancing Japanese forces, no liability would be imposed upon the United States. Similarly, if the oil terminals had been captured intact by the Japanese, our armed forces could then have destroyed them by bombing or shelling without imposing any liability upon the United States. It would be entirely unrealistic to hold that on

January 1, 1942, our armed forces could have destroyed the terminals in Japanese hands at great risk and perhaps haphazardly without creating any liability under the Fifth Amendment, but that liability exists because the terminals were safely and thoroughly destroyed the day before the Japanese occupied the area. In these circumstances, the destruction of the terminals to deny their use to the enemy is indistinguishable from battle damage, and neither is compensable as a matter of right.

In addition, the military situation on December 27, 1941, when the terminals were requisitioned for destruction, rendered the terminals valueless to the respondents. It was, of course, immaterial to them whether the terminals were rendered useless before or after they were taken by the Japanese. If American forces had not destroyed the terminals when they did, the value of the terminals was so speculative, depending solely upon a remote possibility that they would survive the war intact, as to constitute a further reason for holding such destruction to be non-compensable.

Governments do not obligate themselves to pay for battle damage because they cannot afford to assume what may in some cases be stupendous liabilities. For the same reason, the Fifth Amendment should not be interpreted as imposing upon the United States a rigid obligation to pay for property which it destroys to deny its use to an enemy. History shows that nations

sometimes find it necessary to employ tactics of defensive destruction, i. e., the "scorched earth" policy, on a scale which would preclude the assumption of any rigid obligation to pay for such destruction.

In view of the destructiveness of modern warfare, it is essential for the United States to retain freedom of action to deal with all of the devastation of war in terms of over-all reconstruction needs. The experience of World War II has already demonstrated that problems of large-scale reconstruction cannot be solved by rigid legal rules of compensation for particular types of war damage.

B. Even if the question were one of first impression, the legal principles which have been developed in analogous cases of destruction of private property in the public interest, and in determining compensability for losses incident to government regulation in both peace and war, must lead to the conclusion that the destruction of property to deny its use to the enemy is not compensable under the Fifth Amendment. The conflagration cases, holding that property may be destroyed without compensation to prevent the spread of a fire, and *Miller* v. *Schoene*, 276 U. S. 272, holding that cedar trees may be destroyed without compensation to protect a valuable apple industry, sufficiently indicate that the destruction of respondents' oil terminals was not a taking

for public use for which the United States must pay.

C. Furthermore, the question is not open. This case is controlled by *United States* v. *Pacific Railroad,* 120 U. S. 227, in which this Court concluded as an essential link in its reasoning that the destruction of property by the United States to impede the advance of an enemy, like property destroyed in the hands of an enemy, is not compensable as of right under the Fifth Amendment. Again, in *Juragua Iron Co.* v. *United States,* 212 U. S. 297, this Court, adopting the rationale of its earlier decision, held that the United States was not required to pay for American property in Cuba which had been destroyed to protect the health of its armed forces in the field.

D. The conclusion of this Court that the Fifth Amendment does not require the United States to pay for property destroyed to deny its use to the enemy, finds the strongest support in the long-standing view of the Congress that the United States is not liable for such war losses. Claims for such destruction arising out of the Revolution and every later conflict have been presented to Congress. A few have been paid. More significant, payment has been denied in many cases. Particularly following the Civil War, in which many such claims arose, Congress and its committees have repeatedly, and after full consideration, concluded that such destruction, like

destruction in actual combat, is not compensable as of right. As recently as 1946, in the Philippine Rehabilitation Act, Congress in effect reiterated its view that property destroyed to prevent its use by the enemy was compensable only as a matter of grace, by providing partial compensation both for property so destroyed and property destroyed or damaged in battle.

E. If, as respondents contend, it was the generally accepted rule and practice in international law to require compensation for neutral property destroyed by a belligerent to deny its use to the enemy, such a rule and practice would be persuasive, although far from decisive, in the construction of the just compensation clause of the Fifth Amendment. However, writers on international law have divided on the question of liability for such destruction. In the nineteenth and early twentieth century, and particularly in the aftermath of the Civil War, international mixed claims commissions both granted and denied compensation for such destruction in several cases involving property located in enemy territory. The principle of the cases imposing liability was rejected for our law in *Juragua Iron Co.* v. *United States, supra.* Moreover, while the Department of State apparently accepted the result of those cases and sought to obtain similar recognition of such claims by American nationals against foreign governments, it is now clear that the trend is toward denial

of compensation for property destroyed to deprive the enemy of its use.

ARGUMENT

THE DESTRUCTION DURING HOSTILITIES OF PRIVATE PROPERTY OF MILITARY VALUE, TO PREVENT SUCH PROPERTY FROM FALLING INTO THE HANDS OF THE ADVANCING ENEMY, IS NOT A TAKING FOR PUBLIC USE WHICH REQUIRES THE PAYMENT OF JUST COMPENSATION UNDER THE FIFTH AMENDMENT

The sole question in this case is whether the command of the Fifth Amendment, "nor shall private property be taken for public use, without just compensation," requires the United States to pay for private property of military value which was destroyed by its armed forces to prevent such property from falling into the hands of advancing enemy forces. The decision below is based upon the view that the destruction of property "to deny it to the enemy was as much a public use as if it had been consumed by friendly troops in battle" (IR. 51) and must therefore be paid for under the Fifth Amendment. We contend that the decision is erroneous in that by exalting the supposed equities of this case into a rigid constitutional rule it potentially exposes the United States to financial burdens which no government dares to assume, and in that it disregards the contrary interpretation of the Fifth Amendment by this Court, the Congress and the President.

A. THE UNITED STATES CANNOT ASSUME A RIGID AND UNLIMITED LIABILITY FOR PROPERTY WHICH IT DESTROYS TO DENY ITS USE TO AN ENEMY

In later subsections of the brief, we point out that this Court, the Congress, and the President have all denied liability for property of military value destroyed to prevent its use by the enemy. In this part, we shall treat the matter as *res nova* and detail the underlying considerations making it inadvisable and inappropriate for the Court to lay down any rigid rule, rooted in the Constitution, of liability in such circumstances.

No government assumes a legal obligation to compensate its citizens for property destroyed in battle, whether by the action of its own or enemy forces. Governments do not legally obligate themselves to pay for such damage because it often reaches such proportions that they cannot afford to do so fully, as would be required under any legal prineiple of just compensation. Property destroyed to prevent it from falling into the hands of the enemy is just as much the result of military operations as battle damage. It is neither practical nor equitable to attach to the former a rigid right to full compensation which concededly does not exist with respect to battle damage.

The property here involved consisted of oil terminal facilities owned by the three respondents and located in Manila, Philippine Islands. The unchallenged findings of the Court of Claims

are that the property was requisitioned by the Army on December 27, 1941, "in anticipation and for the purpose of destruction to prevent items of military value from falling into the hands of the enemy" (IR. 42) and that the property was destroyed on December 31, when the Japanese forces were entering Manila (IR. 48). It is undisputed that these circumstances justified the destruction of the property, so that damages could not be recovered from the Army personnel who directed the destruction. *Mitchell* v. *Harmony,* 13 How. 115, 133.

If the Japanese forces had destroyed the oil terminals while they were in American hands, as by bombing or shelling, the United States clearly would not be obligated under the Fifth Amendment to compensate the respondents for the loss of their property. Similarly, if the Japanese forces had captured the oil terminals intact, and the terminals were then destroyed by the United States, as by bombing or shelling, the United States would be under no obligation to pay for such destruction. *Perrin* v. *United States,* 4 Ct. Cl. 543, 547–548, affirmed, 12 Wall. 315. These propositions apparently are conceded by the court below (IR. 54) and by the respondents (Br. in Opp., pp. 7–8), on the ground that they would be "due to the ravages of war inflicted by our own or enemy forces in the conduct of a campaign" (IR. 54). We submit that, both from

the point of view of the owners and in the lack of beneficial use by the United States, there is no basis for distinguishing the destruction of property to deny it to the enemy from the destruction of property by the enemy or while in the enemy's possession. Compensation is not required for either, and for the same reasons.

Viewed realistically, the military situation on December 27, 1941, had rendered the Pandacan oil terminals completely without value to the respondents. If the United States had not systematically destroyed the oil terminals when it did, they would have been in the hands of the Japanese a few hours or a day later. As soon as they were in Japanese possession, American airmen or ground raiders, at the risk of their lives, could have destroyed the terminals without imposing upon the United States any obligation to compensate the owners. It is completely anomalous to say that the Fifth Amendment imposes an obligation to pay because the terminals were thoroughly and safely destroyed while still in American possession to deny their use to the Japanese. The Constitution places no such premium upon the hard way of waging war.[5a]

[5a] During World War I, the retreating Allies severely damaged the Rumanian oil fields to deny their use to the advancing Germans (See *infra*, p. 60). In World War II, with Rumania on the side of the Axis powers, only air attack could deprive Germany and her Allies of Rumanian oil. The first American raid on the Ploesti refineries cost 54 planes. *The Army Air Forces in World War II*, vol. II, pp.

From respondent's point of view, it could make no difference whether their terminals were destroyed before or after they fell into Japanese hands. As President Grant, whose authority in military matters will be conceded, stated in vetoing a bill providing payment for a Kentucky salt works which was destroyed by Union forces to deny its use to the Confederacy, "Had General Craft and his command destroyed the salt-works by shelling out the enemy found in their actual occupancy, the case would not have been different in principle from the one presented in this bill. What possible difference can it make in the rights of owners or the obligations of the Government, whether the destruction was in driving the enemy out, or in keeping them out, of the possession of the salt-works?"[6]

Here, the destruction of the respondents' oil terminals was as much the result of the military situation, rather than a "taking" by the United States, as though it had been destroyed in actual battle. As the dissenting opinion below points out (IR. 60): "There was no hope of saving the property. If the city were further defended, the property would undoubtedly be destroyed. If it fell into the hands of the Japanese it would certainly be destroyed before they gave it up. In

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477–483. The total cost of depriving the Axis powers [illegible] use of the Ploesti facilities included the loss of 350 heavy bombers. *Id.*, vol. III, p. 298.

[6] Senate Ex. Doc. 42, 42d Cong., 3d Sess.

fact, practically all Manila, residential and otherwise, was destroyed in the process of retaking three years later. Any possible value to the plaintiffs was gone whichever horn of the dilemma is taken." In the words of the House Committee on War-Claims, House Report 134, 43d Cong., 2d Sess., p. 284 (the so-called Lawrence report), "A nation should not be liable for property taken to prevent it from falling into the hands of an enemy, because it is impossible to establish any just measure of damages. What is the value of property liable to the imminent impending danger of being taken or destroyed by rebels? Why should the Government pay when the markets of the world could not supply another purchaser?"

The value to its owners of property of military value in the path of an advancing enemy is so hopelessly speculative as to preclude any obligation to pay for its destruction to deny it to the enemy. To paraphrase the Lawrence report, why should the United States pay for the destruction of oil terminals on December 31 which it could destroy on January 1 without any obligation to pay? It was this absence of value to the owners of property thus situated and destroyed by the United States which led Judge Loring to dissent in *Grant* v. *United States,* 2 Ct. Cl. 551, and prompted even the court below in this case to state (IR. 54) that, "The nearness of the enemy and the causes necessitating the destruction, we

feel, made the Army's action lawful *and may have a bearing upon the question of damages* * * *." (Emphasis supplied.)

Since the destruction of property to deny its use to the enemy is indistinguishable from other war damage, both from the point of view of the owners and in the lack of beneficial use by the United States, the reasons why the United States should not be required to pay compensation are identical. Governments do not *obligate* themselves to pay for battle damage to their citizens' property, whether caused by their own or enemy forces, because they cannot afford to assume what may be enormous obligations. Similarly, governments do not dare commit themselves to pay full compensation for their citizens' property which they destroy pursuant to a policy of defensive devastation. As stated by this Court in *United States* v. *Pacific Railroad,* 120 U. S. 227, at pp. 233-234, with reference to the Civil War:

> The injury and destruction of private property caused by their operations, and by measures necessary for their safety and efficiency, were almost beyond calculation.

The destruction of both public and private property in time of war in order to deny its use to an advancing enemy is an old defensive measure. In modern times, it was employed by Russia against Napoleon, by the Soviet Union against Germany and by Germany against the Soviet Union during World War II, and also

during World War II by other belligerents on a smaller scale, as by the Dutch in the East Indies. Such destruction has been applied not merely to military equipment but also to food, crops, fuel, housing, transportation, communication and storage facilities and anything else which would assist the enemy's military effort. It has been done on such a scale and with such thoroughness that it is commonly referred to as the "scorched earth policy."

It is impossible not to regret the losses incurred by the respondents through no fault of their own. It is also true that if Congress chose, as a matter of grace, to reimburse American property owners for the relatively small amount of their property which was destroyed to deny it to the enemy during World War II, no serious financial consequences would ensue. However, the fact that other nations have had occasion to apply this military policy on a large scale warns that the Fifth Amendment should not be construed to place upon the United States a rigid obligation to pay which, under certain conditions, might create impossible financial burdens for the Government.

Given the destructiveness of any future warfare, responsible governments need to retain freedom of action to deal with great devastation in terms of over-all reconstruction needs and priorities. In such circumstances, for example, much battle damage, admittedly non-compensable

under the Fifth Amendment, might require priority for restoration out of public funds over damage as to which the decision below imposes an absolute obligation upon the United States. The prime purpose of such a reconstruction program would be to insure the replacement of essential facilities, rather than to put cash in the pockets of former property owners. Thus, Section 104 (c) of the Philippine Rehabilitation Act of 1946, 60 Stat. 128, 130, requires that payments made under that Act be used to replace or repair the damaged property or, where that is impossible, "reinvested in such manner as will further the rehabilitation or economic development of the Philippines."[7] Such problems of reconstruction after destructive warfare cannot be solved by creating rigid legal rules for the payment of compensation for particular types of war damage.

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[7] See also Section 20, Part I, War Damage Act, 1943, 6 & 7 Geo. VI, c. 21:

> The Treasury shall give directions to be observed by the Commission for securing that the provisions of this Part of this Act relating to the making of payments in respect of war damage shall be executed in conformity with the public interest as respects town and country planning, the provision of housing accommodation, the development of industries and services and of agriculture, the preservation of amenities, the consumption of supplies of building materials for the time being available, the building requirements of persons engaged in work of public importance, and such other matters as may be prescribed.

B. EVEN AS AN ORIGINAL MATTER, SUCH DESTRUCTION WOULD NOT CONSTITUTE A TAKING OF PROPERTY FOR PUBLIC USE WITHIN THE MEANING OF THE FIFTH AMENDMENT

Ignoring these policy considerations, the court below reasoned that "the destruction of the Pandacan terminals was a use thereof in the common defense," and that "the power of the Federal Government, derived from and limited by the Constitution does not extend to the deliberate destruction of an individual's property for the common cause without the payment to the owner of just compensation." (IR. 54, 55). It is a "fundamental principle," the court stated, that the burden of the common defense "should be distributed among the people as uniformly as practicable * * * that the public generally should bear the cost." (IR. 53–54.) While we shall later discuss the decisions of this Court which have already determined that the destruction of property to deny its use to the enemy is not compensable under the Fifth Amendment, it may be useful to point out that this rationale of the court below is refuted by the many decisions of this Court defining the circumstances in which governmental action creates a right to compensation under the Fifth Amendment. Like the other provisions of the Bill of Rights, the Fifth Amendment is neither unqualified nor a prohibitive restriction upon the exercise of necessary governmental powers.

Thus, although taxation for a public purpose is obviously a taking of private property, the exercise of the tax power is not governed by the principles of eminent domain. *Houck* v. *Little River Drainage District*, 239 U. S. 254, 264–265; *County of Mobile* v. *Kimball*, 102 U. S. 691, 703. Similarly, in the exercise of its power to impose fines and forfeitures, the Government may, as a reasonable aid to law enforcement, lawfully confiscate property used in violation of law although the owner is innocent of any knowledge of its illegal use. *General Motors Acceptance Corp.* v. *United States*, 286 U. S. 49; *United States* v. *One Ford Coupe*, 272 U. S. 321.

Of more pertinence here, a state may, in order to promote the public health, morals or safety, prohibit the manufacture and sale of an otherwise lawful commodity (*Mugler* v. *Kansas*, 123 U. S. 623; *Powell* v. *Pennsylvania*, 127 U. S. 678; *Carolene Products Co.* v. *United States*, 323 U. S. 18), and order the slaughter of diseased cattle and the destruction of decayed or unwholesome food (*North American Storage Co.* v. *Chicago*, 211 U. S. 306; *Lawton* v. *Steele*, 152 U. S. 133, 136). In some circumstances, private property may be destroyed even to promote the public convenience or the general prosperity of the State. *Miller* v. *Schoene*, 276 U. S. 272; *C. B. & Q. Railway* v. *Drainage Comm'rs*, 200 U. S. 561.

Under the war power, the Government may confiscate the property of alien enemies in the United States despite the fact that the Fifth Amendment applies broadly to "persons" and not only to "citizens." *Miller* v. *United States,* 11 Wall. 268; *United States* v. *Chemical Foundation, Inc.,* 272 U. S. 1, 11. Although artillery fire over adjoining land in time of peace may, in appropriate circumstances, constitute the taking of an easement for which just compensation must be paid, the Fifth Amendment is inapplicable to such action in time of war. *Peabody* v. *United States,* 231 U. S. 530; see *Portsmouth Harbor Land & Hotel Co.* v. *United States,* 260 U. S. 327, 335–336 (Brandeis, J., dissenting). Nor is the Fifth Amendment applicable to many wartime governmental actions which result in substantial damage to property interests. Thus, it is not a "taking" to regulate the rate at which an owner may rent his property even though it prevents the earning of a fair return on the property's value (*Bowles* v. *Willingham,* 321 U. S. 503); to fix the prices of commodities (*Yakus* v. *United States,* 321 U. S. 414); to restrict the right to earn profits (*Lichter* v. *United States,* 334 U. S. 742); to reduce the value of a business by prohibiting the sale of an otherwise lawful commodity (*Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146; *Jacob Ruppert* v. *Caffey,* 251 U. S. 264); to cause a company to curtail and

even to cease operations because deprived of needed materials by priority and allocation orders (*Steuart & Bro.* v. *Bowles,* 322 U. S. 398; *St. Regis Paper Co.* v. *United States,* 110 C. Cls. 271, certiorari denied, 335 U. S. 815); or to order a company to close down its operations because of war needs (*Oro Fino Consolidated Mines, Inc.* v. *United States,* 118 C. Cls. 18, certiorari denied, 341 U. S. 948).[8]

Further, property may be destroyed without compensation under the doctrine of inevitable necessity—the doctrine epitomized by the maxim *salus populi est suprema lex.* It is well-settled that the destruction of a house in the path of a conflagration to prevent the spread of the fire is not an eminent domain "taking." *Bowditch* v.

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[8] It is pertinent to observe that the non-compensable losses which result from the total mobilization of effort, man-power and property required to wage war successfully are not confined to property losses. Restrictions were also placed on wages, the right to strike, and collective bargaining. See *A Symposium on Labor Law in War-Time,* 29 Iowa L. Rev. 145, *et. seq.* The Government conscripted millions of citizens into the armed services, divorcing them from their normal pursuits, separating them from their families, and exposing them to the hardship and hazards of combat, including possible injury and loss of life. *Falbo* v. *United States,* 320 U. S. 549; *Selective Draft Law Cases,* 245 U. S. 366; cf. *Commers* v. *United States,* 159 F. 2d 248 (C. A. 9), certiorari denied, 331 U. S. 807. This Court sanctioned the restriction of the personal freedom of American citizens by curfew orders and the designation of areas from which a large class of citizens was excluded. *Hirabayashi* v. *United States,* 320 U. S. 81; *Korematsu* v. *United States,* 323 U. S. 214.

Boston, 101 U. S. 16; *Field* v. *City of Des Moines*, 39 Iowa 575; *Russell* v. *The Mayor*, 2 Denio (N. Y.) 461; *American Print Works* v. *Lawrence*, 23 N. J. L. 590, 605–607, 615; *McDonald* v. *City of Red Wing*, 13 Minn. 38. Similarly, the destruction of a mill and dam during a freshet to prevent the washing out of a highway does not require the payment of compensation. *Aitken* v. *Village of Wells River*, 70 Vt. 308. And, of particular significance here, it has been held that action by municipal authorities in collaboration with the townspeople to destroy liquor which otherwise would have fallen into the hands of advancing Federal troops during the Civil War was a justifiable, non-compensable destruction. *Harrison* v. *Wisdom*, 54 Tenn. 99; *Wallace* v. *City of Richmond*, 94 Va. 204. See also *Parham* v. *The Justices*, 9 Ga. 341, 349; *Respublica* v. *Sparhawk*, 1 Dall. (Pa.) 357, 362.

The losses necessarily incident to the actual conduct of hostilities, we submit, stand on no different constitutional footing than these other non-compensable losses. Plainly, the destruction of a basic war material on the field of battle to prevent its imminent capture and use by the enemy is no less a justified destruction of property than the destruction of valuable cedar trees to prevent the spread of cedar rust to apple trees (*Miller* v. *Schoene, supra*) or the destruction of fishing nets to preserve wildlife (*Lawton* v. *Steele, supra*). Property which will undoubtedly be used by the

enemy if captured is certainly no less a "nuisance" necessitating abatement than diseased cattle or decayed and unwholesome food (*North American Storage Co.* v. *Chicago, supra*). Nor can it be thought that the dictates of national self-preservation in the path of war are any less stringent than those of community preservation in the path of conflagration. The considerations of policy underlying the doctrine of inevitable necessity are immeasurably stronger in the circumstances here involved. As applied in the conflagration cases, the destruction of property is held justified even though it benefits but a few individuals. In contrast with that limited public purpose, the destruction of the respondents' properties served a common national need. Here, "*salus populi* is then, in truth, *suprema lex.*" *United States* v. *Pacific Railroad,* 120 U. S. 227, 234.[9] It is the nature of modern war that few can

[9] The opinion below suggests that the right to destroy another's property under the pressure of overbearing necessity and self-preservation is a right as between individuals and has no connection with the state's right of eminent domain (IR. 51, 55). This attempted distinction errs in two respects. First, it has long been recognized that the Nation possesses the right of self-preservation. *Dennis* v. *United States*, 341 U. S. 494, 501, 519. And, certainly, the Nation's right of self-preservation is of no less status than that of an individual. Second, the dsetruction of the respondents' properties was not an exercise of eminent domain but an exercise of the war power, resting upon the doctrine of necessity. *Mitchell* v. *Harmony*, 13 How. 115; *Ford* v. *Surget*, 97 U. S. 594, 606; see also 1 Nichols, *The Law of Eminent Domain* (3d Ed.) §§ 1.43, 1.44, 1.44 [7].

count confidently upon emerging unscathed. "In total war it is necessary that a civilian make sacrifices of his property and profits with at least the same fortitude as that with which a drafted soldier makes his traditional sacrifices of comfort, security and life itself." *Lichter* v. *United States*, 334 U. S. at 745. See also *United States* v. *Bethlehem Steel Corp.*, 315 U. S. 289, 305.

C. THIS COURT HAS HELD THAT THE FIFTH AMENDMENT DOES NOT REQUIRE PAYMENT OF COMPENSATION FOR PROPERTY DESTROYED BY THE UNITED STATES TO DENY ITS USE TO THE ENEMY OR OTHERWISE TO PROTECT AMERICAN FORCES

Although recognizing that the destruction of property by either belligerent as an incident to battle does not create an obligation to pay for such property, the court below held that the Fifth Amendment requires payment of compensation for property destroyed to deny its use to the enemy. In so holding, the court relied upon its own earlier decisions in *Grant* v. *United States*, 1 Ct. Cl. 41 (1863) and *Wiggins* v. *United States*, 3 Ct. Cl. 412 (1867) and the dictum of this Court in *Mitchell* v. *Harmony*, 13 How. 115, 133 (1851). At the same time, the court below ignored the rationale of this Court's later decisions in *United States* v. *Pacific Railroad*, 120 U. S. 227, and *Juragua Iron Co.* v. *United States*, 212 U. S. 297, which reject the rule of the *Grant* and *Wiggins* cases.

Mitchell v. *Harmony*, *supra*, was an action for damages brought against an American army offi-

cer who, by compelling an American trader to accompany American forces on an expedition into Mexico during the Mexican war, brought about the loss of the latter's property. With respect to the defense that the trader had been required to remain with the army in order to prevent his property from falling into the hands of the enemy, this Court stated (at p. 133) that:

> There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. Unquestionably, in such cases, the government is bound to make full compensation to the owner; but the officer is not a trespasser.

Since the suit was against the officer rather than the United States, it is clear, as the court below noted (R. 50), that the suggestion that the United States must pay compensation for property destroyed to deny it to the enemy is entirely dictum.

The question was presented squarely to the Court of Claims in *Grant* v. *United States, supra,* which involved the destruction by Union forces in Arizona of property of military value to deny its use to advancing Confederate forces. Relying upon Vattel, the minority view in the conflagration cases (see *supra,* pp. 23–24), and the dictum in *Mitchell* v. *Harmony,* the court below

held that such destruction was a taking for public use for which the Fifth Amendment required payment of just compensation. In 1864, a year later, Congress deprived the Court of Claims of jurisdiction over such claims, *inter alia*, arising out of the Civil War (*infra*, pp. 42–43). However, in 1867, *Wiggins* v. *United States*, *supra*, involving an analogous set of facts arising out of the American naval bombardment of Greytown, Nicaragua, was decided by the Court of Claims on the authority of its own decision in the *Grant* case.

It should be noted that, in several cases arising under the Act of July 4, 1864, 13 Stat. 381, and the Act of March 3, 1883, 22 Stat. 485, which withdrew jurisdiction over war damage claims from the Court of Claims, the court below subsequently expressed its disapproval, by way of dictum, of the *Grant* and *Wiggins* decisions. *Walker* v. *United States*, 34 C. Cls. 345, 346; *Presbyterian Church* v. *United States*, 33 C. Cls. 339, 340; *Heflebower* v. *United States*, 21 C. Cls. 228, 237–238. In the instant case, the court indicated its awareness that it had itself questioned the rule of the *Grant* and *Wiggins* cases, by stating that (R. 51) "Certain cases decided in this court under the Bowman Act (13 Stat. 381) [sic] contained dicta indicating that if the question had been then presented to the court, a contrary result might have been obtained" (citing the *Walker* and *Presbyterian Church* cases).

In any event, with this Court's decision in 1887 in *United States v. Pacific Railroad*, 120 U. S. 227, it was authoritatively established that the Fifth Amendment does not require the United States to pay for property destroyed to deny its use to the enemy. Briefly stated, the facts in the *Pacific Railroad* case were these: During the Civil War, a number of railroad bridges had been destroyed in Missouri, by order of the Federal commanding general, to prevent the advance of the enemy. Other bridges had been destroyed by the Confederate forces during their invasion of the State. To further the operations of its armies, the United States rebuilt four of those bridges, two of which had been destroyed by the Federal forces and two by the Confederate forces. Subsequently, to reimburse itself for the cost of rebuilding the bridges, the United States withheld payments due the Railroad for transportation services rendered. The Railroad brought suit to recover the sums due, and challenged the right of the United States to offset the costs of reconstruction.

This Court held that the destruction of the bridges was an act of military necessity for which the Government was not liable, and that their reconstruction was also a military necessity for which the Government could not charge the Railroad. In reaching this result, the Court considered exhaustively the nature of government lia-

bility for the taking and destruction of property "during war, by the operations of armies in the field, or by measures necessary for their safety and efficiency." (120 U. S. at 239.) Drawing a distinction between property destroyed for military purposes and property taken for use by the Army, the Court stated with regard to the first category that (*id.* at 233–234):

> More than a million of men were in the armies on each side. The injury and destruction of private property caused by their operations, and by measures necessary for their safety and efficiency, were almost beyond calculation. *For all injuries and destruction which followed necessarily from these causes no compensation could be claimed from the Government.* By the well settled doctrines of public law it was not responsible for them. The destruction or injury of private property in battle, or in the bombardment of cities and towns, and in many other ways in the war, had to be borne by the sufferers alone as one of its consequences. *Whatever would embarrass or impede the advance of the enemy, as the breaking up of roads, or the burning of bridges, or would cripple and defeat him, as destroying his means of subsistence, were lawfully ordered by the commanding general.* Indeed, it was his imperative duty to direct their destruction. The necessities of the war called for and justified this. *The safety of the state in*

> *such cases overrides all considerations of private loss. Salus populi* is then, in truth, *suprema lex.* [Italics supplied.]

As to the second category of war losses, the Court declared (*id.* at 239):

> In what we have said as to the exemption of government from liability for priate property injured or destroyed during war, by the operations of armies in the field, or by measures necessary for their safety and efficiency, we do not mean to include claims where property of loyal citizens is taken for the service of our armies, such as vessels, steamboats, and the like, for the transport of troops and munitions of war; or buildings to be used as storehouses and places of deposit of war material, or to house soldiers or take care of the sick, or claims for supplies seized and appropriated. In such cases, it has been the practice of the government to make compensation for the property taken. Its obligation to do so is supposed to rest upon the general principle of justice that compensation should be made where private property is taken for public use, although the seizure and appropriation of private property under such circumstances by the military authorities may not be within the terms of the constitutional clause. *Mitchell* v. *Harmony*, 13 How. 115, 134; *United States* v. *Russell*, 13 Wall. 623.

Concluding that the Railroad was not entitled to compensation for the bridges destroyed, the

Court held that, conversely, the Government could not recover for private property values created during military operations (*id.* at 239):

> *While the government cannot be charged for injuries to, or destruction of, private property caused by military operations of armies in the field, or measures taken for their safety and efficiency, the converse of the doctrine is equally true,* that private parties cannot be charged for works constructed on their lands by the government to further the operations of its armies. *Military necessity will justify the destruction of property,* but will not compel private parties to erect on their own lands works needed by the government, or to pay for such works when erected by the government. The cost of building and repairing roads and bridges to facilitate the movements of troops, or the transportation of supplies and munitions of war, must, therefore, be borne by the government. [Italics supplied.]

Respondents' assertions that the *Grant, Wiggins,* and *Mitchell* cases were nowhere rejected by the Court and that the Court's statement that the Government "was not responsible for * * * the burning of bridges" (*id.* at 234) was a "gratuitous dictum" (Br. in Opp., p. 24) are flatly contradicted by the reasoning of the Court and the result reached. Admittedly, the Court was not required to decide whether the

Railroad could have recovered in an action for compensation for the destruction of the bridges, since the Railroad had not made a claim for such compensation. It is apparent from the opinion, however, that the Court considered it necessary to decide that question before reaching the question of the Railroad's liability to the Government for the reconstruction of the bridges. If the destruction of the bridges was a taking for a public use within the meaning of the Fifth Amendment, it necessarily followed that the Government could not charge the Railroad for the reconstruction of the bridges. Being obligated to indemnify the Railroad for the destroyed bridges, the Government's reconstruction of the bridges would merely have been in lieu of the payment of just compensation. Indeed, this was the very argument made by the Railroad in its brief before the Court. Citing the *Grant, Wiggins* and *Mitchell* cases, the Railroad argued that the Government's claim for compensation rested upon an expenditure which natural justice and equity would require it to make and urged the Court to leave the parties where the events of war had left them. See Brief for the Pacific Railroad, Nos. 728, 1303, October Term, 1886, pp. 26–33.[10]

[10] In the Court of Claims, the Pacific Railroad made the same argument as it did in the Supreme Court, relying upon *Vattel* and upon the *Grant, Wiggins, Mitchell* and *Russell* decisions. See Brief, in Court of Claims No. 11,825, December Term, 1884–1885.

As shown above, the Court did not adopt that view of the legal consequences of the destruction. It ruled instead that "while the government cannot be charged for injuries to, or destruction of, private property caused by military operations of armies in the field, or measures taken for their safety and efficiency, the converse of the doctrine is equally true, that private parties cannot be charged for works constructed on their lands by the government to further the operations of its armies." (*Id.* at 239.) It can hardly be supposed, therefore, that this Court was unaware of the *Grant, Wiggins* and *Mitchell* cases, or of the fact that its reasoning was incompatible with statements in those opinions. We think it not without significance that the Court cited the *Mitchell* case solely for the proposition that the government was liable for the military requisition and use of private property (*id.* at 239). On the other hand, as authority for its pronouncement that the Government was not liable for the burning of bridges to "embarrass or impede the advance of the enemy," the Court relied, as we do here, upon the familiar conflagration cases referred to above, pp. 23–24. (*Id.* at 234).

In sum, the issue here presented was necessarily met and fully considered by this Court in the *Pacific Railroad* case. To quote the dissent below, "if the railroad bridges were not 'taken for public use', then neither were the oil terminal facilities at Pandacan." (IR. 59).

In *Juragua Iron Co.* v. *United States*, 212 U. S. 297, this Court again refused to draw any distinction between property destroyed as an incident to battle and property deliberately destroyed to meet an immediate military necessity. The case involved the claim of an American corporation for compensation for the destruction of its buildings located in Cuba during the war with Spain. General Miles had ordered the buildings burned to protect his troops against yellow fever. The Court of Claims denied recovery, stating, after citing this Court's decision in *United States* v. *Pacific Railroad*, (which it did not then refer to as dictum) (42 Ct. Cl. 99, 113–114):

> That a belligerent is not liable for the necessary destruction of private property of a citizen caused by necessary military operations, is also so well settled as hardly to need reference to authorities.

In affirming the decision of the Court of Claims, this Court quoted (212 U. S. at 307) from its "dictum" in the *Pacific Railroad* case, as follows:

> The injury and destruction of private property caused by their operations, and by measures necessary for their safety and efficiency, were almost beyond calculation. For all injuries and destruction which followed necessarily from these causes no compensation could be claimed from the Government. By the well-settled doctrines of public law it was not responsible for

> them. * * * The principle that, for injuries to or destruction of private property in necessary military operations during the civil war, the Government is not responsible, is thus considered established. Compensation has been made in several such cases, it is true; but it has generally been, as stated by the President in his veto message, "a matter of bounty rather than of strict legal right."

Then the Court concluded that (212 U. S. at 308–309):

> * * * the owner of the property has no claim of any kind for compensation or damages; for, in such a case the Commanding General had as much right to destroy the property in question if the health and safety of his troops required that to be done, as he would have had if at the time the property had been occupied and was being used by the armed troops of the enemy for hostile purposes.

The respondents point out that the property involved in the *Juragua Iron Co.* case was located in enemy territory (Br. in Opp., p. 20). Even if that were the controlling factor in the decision, it would still constitute a rejection of the rule of those decisions of international tribunals and commissions, upon which the respondents rely (Br. in Opp., p. 18), requiring the United States to pay for neutral property which it destroyed in enemy territory in various conflicts so as to deny its use to the enemy.

Moreover, there is no reason to suppose that the result in the *Juragua Iron Co.* case was limited to property located in enemy territory. In relying upon its earlier rationale in *United States* v. *Pacific Railroad*, this Court did not suggest that it no longer applied to property in invaded American territory, *i. e.*, railroad bridges in Missouri. Also, in the *Juragua Iron Co.* case, the Court again completely equated the right of the United States to destroy property for the health and safety of its troops to its right to destroy property occupied and used by enemy troops for hostile purposes. Both stem equally from the necessities of war. If the latter can be done without liability on American soil, as admittedly it can, there is no logical reason for requiring compensation for the former. In any event, we think that there is no basis for hinging the right to compensation upon the location of the property in enemy or friendly territory. Wanton destruction of property is not justified in any place. Article 23 (g) of Hague Convention IV of 1907 Respecting the Laws and Customs of War on Land, 36 Stat. 2277, 2302. As this Court held in *Mitchell* v. *Harmony, supra*, the test is military necessity. Particularly in the case of denial destructions, as in the instant case, the only relevant circumstance is whether the property is in the path of war, so that it will be consumed or used

by the enemy unless it is destroyed. Here, the equities favoring compensation to the owners are far less than in the *Juragua Iron Co.* case, since in that case the owners could have expected to retain their property if it had not been destroyed by the United States.

By its decisions in the *Pacific Railroad* and *Juragua Iron Co.* cases, this Court has clearly rejected the principle of the *Grant* and *Wiggins* cases decided by the court below, and, instead, has held that the Fifth Amendment does not require the United States to pay for property destroyed to deny its use to an enemy, just as it does not require payment for property destroyed in actual battle.[11]

D. THE REPEATED REFUSAL OF CONGRESS TO PAY FOR PROPERTY SO DESTROYED IS PERSUASIVE EVIDENCE THAT THE FIFTH AMENDMENT DOES NOT REQUIRE SUCH PAYMENT OF COMPENSATION

The conclusions reached by this Court in *United States* v. *Pacific Railroad*, 120 U. S. 227, and *Juragua Iron Co.* v. *United States*, 212 U. S. 297, find the strongest confirmation in the view of Congress, maintained from the earliest days, that the Fifth Amendment imposes no legal obligation upon the United States to pay for property destroyed to deny its use to the enemy.

[11] In *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 687, fn. 41, the dissenting Justices referred to the *Pacific Railroad* case as standing for the proposition that the "taking and destruction of property during the extreme exigencies of a military campaign" are non-compensable.

Even if the question were an open one in this Court, this long-continued Congressional interpretation of the Fifth Amendment would be almost decisive. But, as we have shown, this Court has already accepted the view of Congress that compensation in the circumstances of the present case is "a matter of bounty rather than of strict legal right." *United States* v. *Pacific Railroad*, *supra*, at 239.

Although Congress had occasion to consider the problem of war claims early in our history, the widespread destruction during the Civil War brought the question to a sharp focus. The passage and veto in 1872 of a bill authorizing the payment of the claim of J. Milton Best, recounted by this Court in the *Pacific Railroad* case (120 U. S. 236–239), resulted in a comprehensive analysis of the general subject of war claims by the House Committee on War-Claims. In 1874, the Committee submitted an elaborate report, usually referred to as the Lawrence Report, H. Rept. 262, 43rd Cong., 1st Sess., as revised and enlarged, H. Rept. 134, 43rd Cong., 2d Sess., pp. 205–297. The considered judgment of the Committee, after a comprehensive study of the various categories of war claims, was that the Government is not liable "to make compensation for the property of a loyal citizen in a loyal State seized and destroyed or damaged by competent military authority—*flagrante bello*—to prevent it from falling into

the hands of the enemy, as an element of strength where warlike operations are in progress or where the approach of the enemy is prospectively imminent." H. Rept. 134, *supra*, pp. 281–297.

With respect to the practice of Congress, the Lawrence Report declares that "notwithstanding anything elsewhere said, the right to compensation finds no sanction by the usage of the Government." (*Id.* at 294.) Turning first to the Revolutionary War, the Report points out that, although property was often destroyed to prevent it from falling into the hands of the enemy, Congress never made any provision for paying such claims nor did the States (*Id.* at 294),

Again, during the War of 1812 property was destroyed by the armed forces of the United States to prevent its capture by the enemy. Contrary to respondents' assertion that "the obligation to compensate under such circumstances was consistently recognized and discharged" (Br. in Opp., p. 18), the action taken by Congress with respect to those claims reveals no established usage or recognition of a legal obligation to pay just compensation. Although, as respondents show, some claims were recognized (Br. in Opp., p. 18), similar claims were denied. See *American State Papers, Class IX, Claims,* No. 243, p. 424; No. 587, p. 835; see also the statement of principles set forth in No. 536, pp. 752–753.

Significantly, although Congress did compensate some claimants, it made no general provision for paying for such losses. If, as respondents contend, compensation in the circumstances of the instant case was considered by Congress to be a legal obligation under the Fifth Amendment rather than a matter of bounty, it is hardly to be supposed that Congress would not have provided for payment in a general enactment. Congress did, in fact, provide generally for the payment of other categories of war losses. By the Act of April 9, 1816, 3 Stat. 261, Congress provided (Sec. 5):

> That where any property has been impressed, or taken by public authority, for the use or subsistence of the army, during the late war, and the same shall have been destroyed, lost, or consumed, the owner of such property shall be paid the value thereof, deducting therefrom the amount which has been paid, or may be claimed, for the use and risk for the same, while in the service aforesaid.

In addition, the Act further provided (Sec. 9):

> That any person who, in the time aforesaid, has sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military depositee, under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage: *Provided,* It shall appear

> that such occupation was the cause of its destruction.

Subsequently, by the Act of March 3, 1817, 3 Stat. 397, Section 9 was limited to:

> houses or other buildings, occupied by an order of an officer or agent of the United States as a place of deposit for military or naval stores, or as barracks for the military forces of the United States.

The omission of any provision for payment of the category of losses here involved demonstrates, we believe, that Congress did not deem such losses to be legally compensable.[12]

Congressional disposition of the claims arising out of the Civil War further substantiates this conclusion. By the Act of July 4, 1864, 13 Stat. 381, Congress provided compensation for the claims of loyal citizens in states not in rebellion for quartermaster's stores and subsistence actu-

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[12] Insofar as the Act provided compensation for houses destroyed by the enemy, it was said in 1818 by the House Committee on Claims to have been enacted as "a law originating in its benignity, and aimed gratuitously for the benefit of any suffering portion of the community." See *American State Papers, Class IX, Claims*, No. 412, p. 590. In this connection, it should be pointed out that one of the private bills relied upon by respondents—the claim of William H. Washington, 6 Stat. 151 (March, 1815)—was a case which came within the policy later adopted in Section 9 of the Act of April 9, 1816. The Government had placed stores in Washington's house, and blew up the house to prevent the stores from being captured by the enemy. *American State Papers, Class IX, Claims*, No. 266, p. 446.

ally furnished to the Army. However, Section 1 of that Act specifically provided:

> That the jurisdiction of the court of claims shall not extend to or include any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the army or navy, or any part of the army or navy, engaged in the suppression of the rebellion, from the commencement to the close thereof.[12]

At the expiration of the Civil War, claims which had thus been excluded from the jurisdiction of the Court of Claims were presented to Congress for payment. Several bills providing compensation for losses sustained in circumstances similar to the present case were passed, but each was vetoed by the President. See Veto Messages of June 1, 1872, Sen. Ex. Doc. No. 85, 42nd Cong., 2nd Sess., for the relief of J. Milton Best; June 7, 1872, Sen. Ex. Doc. No. 86, 42nd Cong., 2nd Sess., for the relief of Thomas B. Wallace; January 29, 1873, Sen. Ex. Doc. No. 33, 42nd Cong., 3rd Sess., for the relief of East Tennessee University; February 12, 1873, Sen. Ex. Doc. No. 42, 42nd Cong., 3rd Sess., for relief

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[12] This Act was enacted within a year after the decision of the Court of Claims in the *Grant* case. For the legislative history of the Act, see Cong. Globe, 38th Cong., 1st Sess., pp. 127, 164–168, 261, 282, 909–920, 924–926 (H. R. 66); Cong. Globe, 38th Cong., 1st Sess., pp. 1010, 2774, 2778, 2781, 3188, 3418–3420, 3499, 3513, 3544, 3547 (H. R. 305).

for the destruction of the Manchester, Ky., salt-works.

As this Court noted in the *Pacific Railroad* case, the claim of J. Milton Best focused attention on the issue and occasioned considerable debate. The history of the claim[14] is set forth in detail in the opinion in the *Pacific Railroad* case (120 U. S. at 236–239), and will not be repeated here.[15] We think it pertinent to add, however, that the principles there laid down by the President in his veto message (120 U. S. at 238) were even more forcefully reasserted in his veto of the bill for the relief of the proprietors and

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[14] Cong. Globe, 41st Cong., 2nd Sess., pp. 1947, 2986–2987 (S. 667), 4587, (H. R. 2240); S. Rep. No. 69, 41st Cong., 2nd Sess.,; Cong. Globe, 41st Cong., 3rd Sess., pp. 62–63, 97–102, 165–169, 295–304, 311–319, 1934 (S. 667); Cong. Globe, 42nd Cong., 1st Sess., pp. 22, 84 (S. 105); Cong. Globe, 42nd Cong., 2d Sess., pp. 120, 2252–2253, 3148, 3621–3624, 3648, 3696, 4155–4156 (S. 105); S. Rep. No. 9, 42nd Cong., 2d Sess.; Sen. Rep. No. 412, 42nd Cong., 3rd Sess.; Cong. Globe, 42nd Cong., 3rd Sess., pp. 1164, 1680 (S. 105); 2 Cong. Rec. pp. 10, 29, 1665 (43rd Cong., 1st Sess.).

[15] Contrast the disposition of the J. Milton Best claim with the claim of Josiah O. Armes, referred to by respondents (Br. in Opp., p. 18), for whose relief a private bill had been passed in 1867, 14 Stat. 617. Armes' house had been burned by Federal troops in Fairfax County, Va., to prevent its use by the enemy as a stronghold. See S. Rep. No. 112, 39th Cong., 2nd Sess. The award of compensation appears to have been an exception to the general rule, and a reward made in consideration of the fact that Armes and his wife had been of service to the Federal troops in giving information of the movement and situation of the Confederate forces. See Lawrence Report (H. Rep. No. 134, 43rd Cong., 2nd Sess.) p. 296, note 175.

lessees of certain salt-works in Manchester, Kentucky (S. 161, 42nd Cong.). Their claim was for the value of the salt-works destroyed in October 1862, by the Union forces in the vicinity of Manchester. Having reason to believe that the Confederate authorities proposed to capture and appropriate the large supply of salt on hand, the Federal commander had ordered his troops to destroy the salt-works. The loyalty of the claimants was unquestioned. See S. Rep. No. 50, 42nd Cong., 2nd Sess. In vetoing the bill, the President reiterated that the objections made by him to the bill for the relief of J. Milton Best applied with equal force to this bill, declaring that (Sen. Ex. Doc. No. 42, 42nd Cong., 3rd Sess., pp. 1–2):[16]

> I cannot agree that the owners of property destroyed under such circumstances are entitled to compensation therefore

[16] For the history of this claim, see Cong. Globe, 42d Cong., 2d Sess., pp. 1176, 2258, 2259, 2302, 3148 (S. 161); S. Rep. No. 50, 42d Cong., 2d Sess.; Cong. Globe, 42d Cong., 3d Sess., pp. 694–697, 722, 897, 919, 929, 930, 949, 1288, 1309; 4 Cong. Rec. 4364, 4467 (S. 969, 44th Cong., 1st Sess.); S. Rep. No. 444, 44th Cong., 1st Sess., Parts 1 and 2; 6 Cong. Rec. 58, 238 (H. R. 1025, 45th Cong., 1st Sess.); 13 Cong. Rec. 51 (47th Cong., 1st Sess.); S. Rep. No. 710, 47th Cong., 1st Sess.; 15 Cong. Rec. 11, 759 (S. 13, 48th Cong., 1st Sess.); S. Rep. No. 99, 48th Cong., 1st Sess.; 17 Cong. Rec. 1033, 3176 (H. R. 1929, S. 2070, 49th Cong., 1st Sess.); 19 Cong. Rec. 32, 241 (S. 526, H. R. 2315, 50th Cong., 1st Sess.); 21 Cong. Rec. 111, 3413, 6326 (S. 610, H. R. 9407, 51st Cong., 1st Sess.); H. Rep. No. 2500, 51st Cong., 1st Sess.; 23 Cong. Rec. 26, 234 (S. 206, H. R. 2553, 52d Cong., 1st Sess.); 25 Cong. Rec. 329, 2184 (S. 436, H. R. 3699, 53d Cong., 1st Sess.).

from the United States. Whatever other view may be taken of the subject, it is incontrovertible that these salt-works were destroyed by the Union Army while engaged in regular military operations, and that the sole object of their destruction was to weaken, cripple, or defeat the armies of the so-called southern confederacy.

I am greatly apprehensive that the allowance of this claim could and would be construed into the recognition of a principle binding the United States to pay for all property which their military forces destroyed in the late war for the Union. No liability by the Government to pay for property destroyed by the Union forces in conducting a battle or siege has yet been claimed; but the precedent proposed by this bill leads directly and strongly in that direction; for it is difficult upon any ground of reason or justice to distinguish between a case of that kind and the one under consideration. Had General Craft and his command destroyed the salt-works by shelling out the enemy found in their actual occupancy, the case would not have been different in principle from the one presented in this bill. What possible difference can it make in the rights of owners or the obligations of the Government, whether the destruction was in driving the enemy out, or in keeping them out, of the possession of the salt-works?

This bill does not present a case where private property is taken for public use, in

any sense of the Constitution. It was not taken from the owners but from the enemy; and it was not then used by the Government, but destroyed. Its destruction was one of the casualties of war; and though not happening in actual conflict, was perhaps as disastrous to the rebels as would have been a victory in battle.

Owners of property destroyed to prevent the spread of a conflagration, as a general rule, are not entitled to compensation therefor; and for reasons equally strong, the necessary destruction of property found in the hands of the public enemy, and constituting a part of their military supplies, does not entitle the owner to indemnity from the Government for damages to him in that way.

The failure of Congress to take any further action on the J. Milton Best and salt-works claims evinces, we believe, congressional recognition and acceptance of the principles of liability announced by the President. The establishment of those principles is further shown by the history of the bill for the relief of East Tennessee University subsequent to its veto by the President (S. 490, 42nd Cong.; veto message of January 29, 1873, Sen. Ex. Doc. No. 33, 42nd Cong., 3rd Sess.). The University's claim was not for the destruction of property to deny its use to the enemy, but for the damage and destruction which occurred while the property was being used by Federal

troops—a claim similar to that of the University of Kentucky, for whose relief a private bill had earlier been enacted on January 17, 1871 (16 Stat. 678). The bill was vetoed by the President because its phrasing made it appear to be a claim for destruction similar to that of J. Milton Best. With the approval of the President, the phrasing of the bill was changed and the bill was subsequently enacted in the succeeding Congress. (S. 110, 43rd Cong.; Act of June 22, 1874, 18 Stat. 604). The congressional discussion of the revised bill reveals quite clearly the acquiescence of Congress in the principles enunciated in the denial of the claim of J. Milton Best. See 2 Cong. Rec. 1317–1319, 5200–5201 (43rd Cong., 1st Sess.).

The usage thus established has apparently continued to this date. As previously noted, *supra*, pp. 42–43, Congress, in 1864, had withdrawn jurisdiction of such claims from the Court of Claims. By the Act of March 3, 1883, 22 Stat. 485, Congress again provided that (Sec. 3):[17]

> The jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the war for the suppression of the rebellion, or for the use and occupation of real estate by any part of the military or naval forces of the United States

[17] For the legislative history of this Act, see 13 Cong. Rec. 3147–3167, 3184–3206; 14 Cong. Rec. 908–912, 946–953, 3660, 3672–3673.

> in the operations of said forces during the said war at the seat of war; nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States.

Again, Civil War claims which had thus been excluded from the jurisdiction of the Court of Claims were presented to Congress for payment. Adhering to the principles established in the denial of the claims of J. Milton Best and the Manchester, Ky., salt-works, Congress reiterated that "the practice and usage of Government during and since the late civil war is a denial of liability for this class of claims." (S. Rept. 22, 48th Cong., 1st Sess., p. 8). In justification of its position, the Senate Committee on Claims relied in part, as we have, upon the conflagration cases, declaring that (S. Rept. 40, 48th Cong., 1st Sess., p. 2):

> There are two classes of cases in which Government, for public ends, deprives the citizen of his property either in war or peace. One is the exertion of the right of eminent domain by which property is taken for public use. This may be for a military use as well as for a peaceful one, as to build a fort or ship, or supply an army. It is, under our Government, exerted by the legislative authority, either directly or by delegation. The other is the right of necessity, where property is used or destroyed

> to avert an imminent danger, or supply an immediate and pressing necessity of such a character that private interests must yield to it. Of this class are the destruction of dwellings to prevent the spread of a fire, the building of bulwarks on private ground, the entering houses to prevent felonies or arrest offenders, and the like. We think the error of those persons who insist on the obligation of Government to make compensation in cases like the present, is in placing them in the first of these divisions. They seem to us to belong to the second. The conflagration of Moscow, the laying Holland under water by destroying the dikes, the destruction of Athens when her people took to their ships, were not process of law or exercise of the right of eminent domain. They were the acts of self-defense of nations in a death struggle, justified only by that overwhelming necessity of self-preservation which for the time being exonerates individuals and nations from all legal restraint whatever.

The right to compensation was again denied by Congress after the Spanish-American War with respect to the claim of William Hardman. Hardman, a British subject, was employed by the Juragua Iron Company and occupied one of its houses in Cuba. His claim, like that of the Juragua Iron Company which later came before this Court (see *supra*, pp. 35–38), was for household goods and clothing destroyed by United States military authorities during that war to

prevent an epidemic of yellow fever. Anticipating this Court's decision in the *Juragua* case, the Senate Committee on Foreign Relations declared that, "The United States Army had a right to destroy this property, without making compensation to the owners. They had a right to destroy it as an act of war, and they had a right to destroy it in order to prevent an epidemic of yellow fever." (S. Rept. 224, 57th Cong., 1st Sess., p. 2).

More recently, the doctrine of non-liability was adopted in the Federal Tort Claims Act of 1946, which excludes from the coverage of the Act "any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war." 28 U. S. C. 2680. To the same effect, see the Military Claims Act (31 U. S. C. 223b) and the Foreign Claims Act (31 U. S. C. 224d).

Where Congress has authorized the payment of compensation for the destruction of, or damage to, property resulting from action taken by the armed forces of the United States to deny the enemy the use of such property, it has done so as a matter of grace and as part of a broad comprehensive scheme for rehabilitation. Thus, the Philippine Rehabilitation Act of 1946 (60 Stat. 128, 50 U. S. C. App. 1751, *et seq.*)[18] not

[18] For the legislative history of the Act, see S. Rep. No. 755, 79th Cong., 1st Sess.; H. Rep. Nos. 1921, 1957, 79th Cong., 2d Sess.; 91 Cong. Rec. 10788, 10828, 11036, 11463, 11470; 92 Cong. Rec. 3392, 3435–3450, 3676, 3773, 3987, 4038.

only authorized payment for the losses resulting from "action taken by or at the request of the military, naval, or air forces of the United States to prevent such property from coming into the possession of the enemy" but also for concededly non-compensable losses resulting from "enemy attack," "action taken by enemy representatives, civil or military, or by the representatives of any government cooperating with the enemy," and "looting, pillage, or other lawlessness or disorder accompanying the collapse of civil authority." (Sec. 102 (a), 50 U. S. C. App. 1752 (a).) That compensation under this Act is a matter of grace, rather than of constitutional right, is further demonstrated by the proviso of Section 102 (a) that, "in case the aggregate amount of the claims which would be payable to any one claimant under the foregoing provisions exceeds $500, the aggregate amount of the claims approved in favor of such claimant shall be reduced by 25 per centum of the excess over $500." (50 U. S. C. App. 1752 (a)). See also H. Rep. No. 1921, 79th Cong., 2d Sess., p. 9; Schein, *War Damage Compensation Through Rehabilitation: The Philippine War Damage Commission*, 16 Law & Contemp. Prob. 519.[19]

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[19] The exclusion of the respondent Shell Company from the coverage of the Act, because it is a British corporation (50 U. S. C. App. 1752 (b)(4); see Br. in Opp., p. 25), underscores the fact that compensation was not provided in discharge of any constitutional obligation. It is well-settled

The approach adopted by Congress of providing broadly for the compensation of war claims as a humanitarian rehabilitation measure—a measure similar to those adopted by Great Britain and several European countries [20]—suggests a basic fault of the decision below. The widespread "scorched earth" tactics of modern warfare make the payment of full compensation, as a matter of right, a financial impossibility. For economic, as well as humanitarian, reasons, the damages caused by both enemy and friendly forces must be repaired. But the extent of their repair necessarily rests upon the financial strength of the nation at the close of hostilities. If rehabilitation is to be effective, it must be based on considerations of policy which are applicable generally to the nation as a whole rather than on principles of absolute legal liability. The determination of those considerations, we submit, lies with Congress and not with the courts.[21]

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that friendly alien corporations are protected by the Fifth Amendment. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481.

[20] See Robinson, *War Damage Compensation and Restitution in Foreign Countries*, 16 Law & Contemp. Prob. 347; Brooks, *A Survey of Progress Towards Payment of War Damage Compensation in Europe*, 1 Int'l L. Q. 301; Fraleigh, *Compensation for War Damage to American Property in Allied Countries*, 41 Am. J. Int'l L. 748.

[21] Cf. War Damage Insurance Act of 1942, 56 Stat. 174, 15 U. S. C. 606b–2; Marine War Risk Insurance Acts (Act of June 29, 1936, 49 Stat. 1985, as amended, 54 Stat. 689, 56 Stat. 140, 56 Stat. 214, 57 Stat. 47, 58 Stat. 216) 46 U. S. C. 1128–1128h; Sec. 17 of Contract Settlement Act of 1944, 58

E. NO ACCEPTED PRINCIPLE OR PRACTICE IN INTERNATIONAL LAW SUGGESTS THAT COMPENSATION FOR THE DESTRUCTION OF PROPERTY TO DENY ITS USE TO THE ENEMY SHOULD BE REQUIRED UNDER THE FIFTH AMENDMENT

Since the destruction of property to deny its use to the enemy often involves property owned by nationals of neutral states, the question of whether compensation must be paid for property so destroyed has been a frequent issue before international mixed claims commissions and in discussions between governments. If from such disputes there had developed a generally accepted principle of international law that a belligerent must pay for neutral property which it destroyed to deny its use to the enemy, such a principle might be persuasive in determining whether the Fifth Amendment requires compensation for property so destroyed. However, contrary to the respondent's contention that the decision below reflects "an established and consistently recognized principle of * * * international law" (Br. in Opp., p. 14), there is not only divided opinion among commentators and inconsistency in the decided cases, but also this Court has already rejected the principle of most of the decisions upon which respondent relies.

Stat. 649, 41 U. S. C. 117; Lucas Act of 1946, 60 Stat. 902, 41 U. S. C. 106 note; see also Sec. 8 of the War Claims Act of July 3, 1948, 62 Stat. 1245, 50 U. S. C. App., Supp. V, 2007; Report of War Claims Commission, H. Doc. No. 580, 81st Cong., 2d Sess.; S. J. Res. 171, 82d Cong., 2d Sess.; Cong. Rec., July 5, 1952, pp. 9588–9591.

The court below places considerable emphasis on the writings of Vattel and Grotius (IR. 50, 51);[22] other commentators are also cited by respondents (Br. in Opp., p. 19).[23] But equally

[22] Vattel does not purport to state the consensus on this question but only his own views. He expressly points out that "we may learn from Grotius that authors are divided on this question." Vattel, *Law of Nations*, Bk. III, c. XV, § 232. Further, it should be noted that the correctness of Vattel's position is denied in footnote 181 of the Chitty edition of 1863. Respondents' citation of Grotius is to a general comment on the principles of eminent domain (Bk. II, c. XIV, § 7). Elsewhere, referring directly to the question "What in regard to property already lost in war?", Grotius states that citizens should share the common losses which are suffered by reason of their association, but that "obviously, also, the municipal law may expressly provide that there shall be no right of action against the state for property lost in war, to the end that each individual shall defend his property with greater energy." Grotius, *De Jure Belli Ac Pacis Libri Tres*, Bk. III, c. XX, § 8, *The Classics of International Law*, No. 3, Vol. II (1925 ed.).

[23] The citations to II Oppenheim, *International Law* (2d ed. 1912) 446–449; Spaight, *War Rights on Land* (1911) 510–512; and Taylor, *International Public Law* (1901) 701–704, are entirely inapposite. Oppenheim, Spaight and Taylor are there discussing the right of angary which relates solely to neutral movable property temporarily in the country of a belligerent. (See VI Hackworth, *Digest of International Law* (1943) § 609; Bouvier, *Law Dictionary* (Rawle's Third Revision) p. 195). Since the property here involved had a fixed situs in Manila, it is clear that its destruction has no reference to the right of angary. Further, the citation to Taylor, *op. cit. supra* at 556–557 is, we believe, contrary to the respondents' position rather than in support thereof. The reference to II Halleck, *International Law* (4th ed. 1908) 70–71, is to General Halleck's instructions of March 5, 1863, to the Union Armies. But cf. Vol. I, p. 520, note 1; see also paragraph 15 of the *Instructions For*

eminent writers hold an opposing view. Thus, Wolff states that (*Jus Gentium Methodo Scientifica Pertractatum*, § 830, *The Classics of International Law*, No. 13, Vol. II (1934 ed.):

> Since the strength of the enemy is increased, if he has an abundance of the things which he needs to carry on war in any way, and is diminished, if he is deprived of them, it is allowable to destroy not only hay and straw which the enemy has collected for use in war, and to set fire to gunpowder, but also to destroy flour, and food and drink. Nay more, not only must this be done, in order that our property of this sort may not come into the power of the enemy, but also our other property which is useful in war may be destroyed, in order that it cannot be used against us.

In accord with that statement, a more recent writer, Whiteman, declares that "where the property is in imminent danger of the enemy and is destroyed in order to prevent its falling into enemy hands, compensation is not usually made." II Whiteman, *Damages in International Law*

The Government Of Armies Of The United States In The Field, General Orders, No. 100, April 24, 1863, II Halleck, *op. cit. supra* at p. 56; War Department Basic Field Manual, *Rules of Land Warfare* (FM 27–10, 1940 ed.), par. 314. Lastly, respondents' reliance on Nichols is completely misplaced. Far from supporting respondents, Nichols states that "at the seat of hostilities property may be taken or destroyed no matter who may be the owner, whether friend, foe or neutral." I Nichols, *The Law of Eminent Domain* (3d ed.) § 1.44 [7].

(1937), p. 1429. To the same effect, see also Borchard, *Diplomatic Protection of Citizens Abroad* (1915), pp. 264–265;[24] Davis, *Elements of International Law* (1903), p. 352, note 2; I Nichols, *The Law of Eminent Domain* (3d ed.) § 1.44 [7]; Taylor, *International Public Law* (1901), pp. 556–557; II Wharton, *International Law Digest* (2d ed.), p. 587; Wormser, *Collection of International War Damage Claims* (1944), pp. 157–158.

Respondents assert that liability to pay for property destroyed to deny its use to the enemy was established by the decisions of mixed claims commissions in the cases of *Crutchett, Martin, McDonald, Turner, Barrington, Putegnat's Heirs,*

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[24] Since the respondents have questioned our reliance upon Borchard (Br. in Opp., p. 21), we set forth his discussion of the question from pp. 264–265:

> It has been noted that when military necessity in the presence of the enemy demands the immediate destruction of property to prevent its falling into the enemy's hands no liability is incurred by the belligerent. The line between overruling necessity in the face of immediate danger and deliberate destruction for the ultimate end of preventing its capture by the enemy is often exceedingly vague, so that courts and commissions in numerous cases have considered such destruction under the latter head as an appropriation of private property for the public use and have awarded indemnities to the owner. To justify its destruction without title to indemnity, the danger of its capture by the enemy must be immediate and impending.

Even under the distinction drawn in the quoted passage, the destruction of respondents' oil terminals would not be compensable.

Chourreau, Bertrand and *Labrot* (Br. in Opp., p. 18). *Crutchett's* case is inapplicable as it involved a claim for the use and occupation of a building in Washington, D. C., as a barracks during the Civil War (IV Moore, International Arbitrations (1898), pp. 3734–3735). In *Barrington,* there was "no proof that it was done in the presence of the enemy, who at that time did not seem to have been near" (IV Moore, *op. cit., supra,* p. 3674), a circumstance which would relate to the necessity for destruction. The claim of *Putegnat's Heirs* for property stored in a warehouse which had been turned into a fortification and destroyed by enemy fire, closely resembles battle damage (IV Moore, *op. cit., supra,* pp. 3718–3720). *Labrot's* claim was for trees destroyed to give free range to guns (IV Moore, *op. cit., supra,* p. 3706). The remaining cases, *Martin, McDonald, Turner, Chourreau* (the facts here were confused) and *Bertrand,* involved property located *in enemy territory* which was destroyed by American forces to deny its use to the enemy (IV Moore, *op. cit., supra,* pp. 4378, 3683, 3684, 3705, 3705–3706).

The principle of these cases in awarding compensation for property destroyed in enemy territory was squarely rejected by this Court in *Juragua Iron Co.* v. *United States,* 212 U. S. 297. Moreover, the same French-American mixed claims commission, which made the *Chourreau*

and *Bertrand* awards under the Convention of January 15, 1880, held the French government not liable for the destruction of a factory during the siege of Paris to prevent its use by the Germans. *Giles's Case,* IV Moore, *op. cit., supra,* pp. 3703–3704.

Following the Spanish-American War, compensation was apparently denied where property was destroyed to bar its use by the enemy or for comparable reasons of military necessity. See *Juragua Iron Co.* v. *United States, supra.* Thus, the Statement of Principles of the Spanish Treaty Claims Commission declares that (Sen. Doc. No. 25, 58th Cong., 2d Sess., pp. 6–7):

> The property of alien residents, like that of natives of the country, when "in the track of war", is subject to war's casualties, and whatever in front of the advancing forces either impedes them or might give them aid when appropriated, or if left unmolested in their rear might afford aid and comfort to the enemy, may be taken or destroyed by the armies of either of the belligerents; and no liability whatever is understood to attach to the government of the country whose flag that army bears and whose battles it may be fighting.

Also, the claim of *William Hardman,* a British subject whose personal property had been destroyed in one of the houses involved in the *Juragua* case, was denied by an Anglo-American

tribunal. V Hackworth, *Digest of International Law*, p. 701. In the claim of the *West India Oil Company* for oil which was thrown into the sea by authorities of Manzanillo, Cuba, at the time of an American naval bombardment of that port, recovery was denied, apparently by analogy to the conflagration cases. V Hackworth, *op. cit.*, pp. 701–702.

Pointing to this country's espousal of the claim of the Standard Oil Company of New Jersey against the British Government for the destruction of its properties in Roumania in 1916 to deny their use to the Germans, respondents assert that the Department of State has placed itself forcibly in accord with the position for which respondents contend (Br. in Opp., pp. 18–19). See II *U. S. Foreign Rel.: 1926*, pp. 308–335. In urging its view upon Great Britain, the Department of State cited the *Grant, Wiggins,* and *Mitchell* cases and Turner's Civil War claim (*supra*, p. 58), and made no reference to this Court's decisions in the *Pacific Railroad* and *Juragua* cases. *Id.*, at pp. 328–332. Presumably, the Department of State was seeking to recover for American nationals compensation for denial destructions such as had been accorded Turner and others in claims arising out of the Civil War. At any rate, what is significant is that the British Government asserted that there was no right to compensation, stating (*id.*, at pp. 324–325) that

> * * * the destruction of this property, being, as your memorandum admits, an act of war, gives rise to no legal right to compensation. The principle that "war losses" do not give rise to a legal right to compensation is not limited to war losses in the sense of loss or damage inflicted by the enemy, but covers also loss and damage which the commander in the field is himself obliged to inflict upon the owners of property in the area under his authority: see the decision of the Tribunal in the "Hardman" case in the arbitration between the British and United States Governments * * *.

It is not surprising that, as respondents point out (Br. in Opp., p. 18), only three years later, in 1929, the State Department informed the League of Nations Preparatory Committee of the Conference for the Codification of International Law that the United States had indemnified both its own citizens and foreigners for property destroyed to prevent it from falling into the hands of the enemy. Again, the State Department cited only the *Mitchell*, *Grant*, and *Wiggins* cases, plus the claims of *Turner* and *Martin* (cited as *The York*). As noted above, p. 58, the *Turner* and *Martin* claims involved property located in enemy territory and the principle of the awards in those cases was rejected by this Court in the *Juragua* case.

It is doubtful that the Department of State adheres to those views today. We are advised

by the Department that a contrary conclusion was informally reached in May 1950, with respect to the claim of one of the respondents in this case for damages amounting to $14,500,000 arising out of a foreign government's destruction of property to deny its use to the invading Japanese forces.[25] In any event, it appears that the United Kingdom, despite its 19th century position in such claims as *Turner* and *Martin*, still maintains its 1926 view that belligerent nations are under no obligation to pay compensation for "requisitions which may have been carried out for purposes of destruction or denial to the enemy, which would be regarded as coming within the category of war damage". (see Appendix, *infra*, pp. 64–65).[26]

It is clear, therefore, that in the practice of nations there is no established rule that compensation must be paid for property destroyed in time of war to deny its use to the enemy. While

[25] A memorandum by the Office of the Legal Adviser, dated May 12, 1950, which recommended against intervention on behalf of the claimant by the Department, was furnished to a representative of the claimant to afford the claimant an opportunity to present to the Department a brief in support of its position. As yet, the claimant has not availed itself of that opportunity.

[26] In this connection, we think it pertinent to point out that the position of the British Government in the Standard Oil Company dispute is supported by historical precedent. Moore tells us that Russia summarily denied the claim of an American citizen for the loss of his property as a result of the burning of Moscow in 1812. See VI Moore, *International Law Digest* (1906) p. 883.

the arbitration awards arising out of the Civil War seemed to point toward the acceptance of such a principle of liability, the later trend has been to deny liability. Not only are the international law materials inconclusive on the point, but the reluctance of other nations to accept such liabilities as a matter of law further suggests that it would be unwise for the United States to do so as a matter of constitutional obligation even to its own citizens.

CONCLUSION

We urge, therefore, that this Court should reaffirm the principle expressed in *United States* v. *Pacific Railroad, supra,* and repeatedly stated by Congress, that the Fifth Amendment does not require the payment of compensation for property destroyed by the United States to deny its use to an advancing enemy. Accordingly, it is respectfully submitted that the judgment below should be reversed.

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SEPTEMBER, 1952.

APPENDIX

DEPARTMENT OF STATE,
Washington, D. C., September 8, 1952.

In reply refer to
L/C

The Honorable JAMES P. MCGRANERY,
Attorney General.

MY DEAR MR. ATTORNEY GENERAL: Reference is made to oral discussions between an officer of the Department of Justice and an officer of this Department concerning a communication of April 5, 1949, addressed to the American Embassy at London by the British Foreign Office, which was forwarded to the Department by the Embassy with despatch No. 650 of April 12, 1949.

The Foreign Office's note was in reply to an inquiry addressed to it by the American Embassy at London as to whether Great Britain acknowledges a responsibility to provide compensation to foreign nationals for property requisitioned in Burma and Singapore by British authorities during World War II. The above-mentioned note expressed the following views:

> "Compensation for property requisitioned in Burma and Malaya by the Governments of Burma and Malaya, under local Defence Regulations, is not chargeable to the revenues of His Majesty's Government in the United Kingdom, except insofar as such requisitions may have been on behalf of a United Kingdom Government Department and may therefore be

ultimately chargeable to United Kingdom revenues. This will depend in each case on the circumstances of the requisition and the normal practice of the Departments concerned.

"This exception would not apply to requisitions by or on behalf of the Malay Regiment or other local forces in Malaya and Singapore which were a liability of the Colonial Government. It would however apply to requisitions by or on behalf of any other of His Majesty's Armed Forces including the Burma Army (up to the date of the transfer of power in Burma). In this connection I should make it clear that His Majesty's Government would only accept liability for requisitions for the use of His Majesty's Forces, as distinct from requisitions which may have been carried out for purposes of destruction or denial to the enemy, which would be regarded as coming within the category of war damage."

Sincerely yours,

For the Secretary of State:

/s/ ADRIAN S. FISHER,

Adrian S. Fisher,

The Legal Adviser.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 16

THE UNITED STATES,

Petitioner,

against

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED and STANDARD-VACUUM OIL COMPANY,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION

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May 14, 1952.

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Statement	2
The Facts	2
The Questions Presented	7
Summary of Argument	8
Argument	8
Point I—The Decision of the Court of Claims Rests Upon a Determination of Questions of Fact Which Should Not Be Reviewed by This Court	8
(a) Determinations of fact made by the Court of Claims are not reviewable by this Court	11
(b) The present cases are factually unique and do not present a question of general importance	12
Point II—The Court of Claims Correctly Applied to its Findings of Fact an Established and Consistently Recognized Principle of Constitutional and International Law	14
Point III—The Decision of the Court of Claims is Not in Conflict With Any Decision of This or Any Other Court	20
Conclusion	26

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PAGE

Aleutian Livestock Company, Inc. v. *United States*, 96 F. Supp. 626 (1951), *cert. denied*, 342 U. S. 875 (1951) 8, 21

Mrs. Alexander's Cotton Case, 69 U. S. 404 (1864) ... 21

American Propeller & Manufacturing Co. v. *United States*, 300 U. S. 475 (1937) 12

Baldwin, John P. v. *United States*, Rep. No. 259 from the Court of Claims to the House of Representatives, 36th Cong., 2d Sess. (1860-61) 15

Barrington (U. S.) v. *Mexico*, Commission under the Convention of July 4, 1868, V Moore's Internat. Arb. 3674 18

Bertrand (Fr.) v. *United States*, Commission under the Convention of January 15, 1880, V Moore's Internat. Arb. 3705 18

Booth & Company v. *United States*, 62 Ct. Cl. 288 (1926) 16

Bowles v. *Willingham*, 321 U. S. 503 (1944) 22

Chesapeake & Potomac Telephone Co. v. *United States*, 281 U. S. 385 (1930) 12

Chourreau (Fr.) v. *United States*, Commission under the Convention of January 15, 1880, V Moore's Internat. Arb. 3705 18

Crutchett (Gt. Br.) v. *United States*, Mixed Commission on British-American Claims, May 8, 1871, U. S. For. Rel. 1873, Vol. III 46 18

Dow v. *Johnson*, 100 U. S. 158 (1879) 15

Falbo v. *United States*, 320 U. S. 549 (1943) 22

PAGE

Grant v. *United States*, 1 Ct. Cl. 41 (1863) 15-16, 17, 21, 24
The Gray Jacket, 72 U. S. 342 (1886) 21

Hamilton v. *Kentucky Distillers Co.*, 251 U. S. 146 (1919) 22

Jardel (Fr.) v. *United States*, Commission under the Convention of January 15, 1880, V Moore's Internat. Arb. 3700 18
Jecker v. *Montgomery*, 18 How. 110 (1855) 21
Juragua Iron Co. v. *United States*, 212 U. S. 297 (1909) 20

Labrot (Fr.) v. *United States*, Commission under the Convention of January 15, 1880, V Moore's Internat. Arb. 3706 18
Lawton v. *Steele*, 152 U. S. 133 (1894) 22
Lichter v. *United States*, 334 U. S. 742 (1948) 22
Luckenbach S. S. Co. v. *United States*, 272 U. S. 533 (1926) 12

Martin (Gt. Br.) v. *United States*, Mixed Commission on British-American Claims, May 8, 1871, U. S. For. Rel. 1873, Vol. III 51 18
McDonald (Gt. Br.) v. *United States*, Mixed Commission on British-American Claims, May 8, 1871, U. S. For. Rel. 1873, Vol. III 54 18
Meade v. *United States*, 2 Ct. Cl. 224 (1866) 16
Miller v. *Horton*, 26 N. E. 100 (Mass. 1891) 16
Mitchell v. *Harmony*, 54 U. S. 115 (1852) 14-15, 21, 23, 24
Myers v. *United States*, 22 Ct. Cl. 80 (1887) 17

Omnia v. *United States*, 261 U. S. 502 (1922) 8, 21

Perrin v. *United States*, 4 Ct. Cl. 543 (1868) 7, 16
Presbyterian Church v. *United States*, 33 Ct. Cl. 339 (1898) 17

PAGE

Pugh v. *United States*, 5 Ct. Cl. 113 (1869) 16
Putegnat's Heirs (U. S.) v. *Mexico*, Commission under the Convention of July 4, 1868, V Moore's Internat. Arb. 3718 18

Royal Holland Lloyd v. *United States*, 73 Ct. Cl. 722 (1931) 16

Safeway Stores, Inc. v. *United States*, 118 Ct. Cl. 73 (1950) 6
St. Regis Paper Company v. *United States*, 110 Ct. Cl. 271 (1948), *cert. denied*, 335 U. S. 815 (1948) 22

Turner (Gt. Br.) v. *United States*, Mixed Commission on British-American Claims, May 8, 1871, U. S. For. Rel. 1873, Vol. III 55 18

United States v. *Chemical Foundation, Inc.*, 272 U. S. 1 (1926) 21
United States v. *Esnault-Pelterie*, 303 U. S. 26 (1938) 12
United States v. *Irwin*, 127 U. S. 125 (1888) 21
United States v. *Omaha Tribe of Indians*, 253 U. S. 275 (1920) 12
United States v. *Pacific Railroad*, 120 U. S. 227, 234-35 (1887) 8, 23-24
United States v. *Penn Foundry & Manufacturing Co., Inc.*, 337 U. S. 198 (1949) 12
United States v. *Pewee Coal Company*, 341 U. S. 114 (1951) 6
United States v. *Russell*, 13 Wall. 623 (U. S. 1871) 11-12

The Venus, 8 Cranch 253 (1814) 20

Walker v. *United States*, 34 Ct. Cl. 345 (1899) 17
Wiggins v. *United States*, 3 Ct. Cl. 412 (1867) .. 15, 16-17, 21, 24

TABLE OF STATUTES

	PAGE
Act of July 4, 1864, 13 Stat. 381 (1864-1865)	17
Acts promulgated in 6 Stat. at 147, 150, 151, 153, 155, 186, 188, 194, 195 (1790-1845); 14 Stat. 617 (1860-67); 16 Stat. 76 (1869)	18
Cong. Globe, 41st Cong., 3d Sess. 62-63, 97-103, 165-69, 295-304, 311-19 (1870-1871)	25
Fifth Amendment to the Constitution of the United States (U. S. Const. Amend. V)	2, 5, 6, 7, 9, 13, 24
Philippine Rehabilitation Act of April 30, 1946, 60 Stat. 128 (1946), as amended, 50 U. S. C. App. §§ 1751-1806 (1948)	24-25
Requisition of Military Materials Act of October 16, 1941, 55 Stat. 742-43 (1942), as amended, 50 U. S. C. App. §§ 721-24 (1948)	5, 6, 23
Title 28, United States Code, Sections 1255(1), 1651(a) and 2101(c)	1

MISCELLANEOUS AUTHORITIES

	PAGE
Borchard, Diplomatic Protection of Citizens Abroad (1915)	21
1 Bynkershoek, Laws of War, c. V	21
Grotius, Bk. 2, c. 14, § 7	19
II Halleck, International Law (4th ed. 1908) 70	19
Holland, The Law of War on Land (1918) 68	19
2 Hyde, International Law (2d ed. 1945) 957	19
V Hackworth, Digest of International Law (1943) 705	18
2 Nichols on Eminent Domain (3d ed. 1950) § 7.515	19
II Oppenheim, International Law (2d ed. 1912) 446	19
Spaight, War Rights on Land (1911) 510	19
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U. S. For. Rel. 1926, Vol. II, 332, 335	18-19
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

THE UNITED STATES, *Petitioner,* *against* CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED and STANDARD-VACUUM OIL COMPANY, *Respondents.*	No. 610

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF OF RESPONDENTS IN OPPOSITION

Opinion Below

The opinion of the Court of Claims (R. 44)* and the Special Findings of Fact (R. 30) which are made a part of the judgment of that Court entered herein on November 16, 1951 (R. 61) are reported at 100 F. Supp. 970.

Jurisdiction

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1255(1), 1651(a) and 2101(c).

*Unless otherwise indicated, the figures in parenthesis refer to pages of the printed transcript of record filed herein.

Statement

On December 31, 1941, representatives of the United States Armed Forces in the Far East (USAFFE) destroyed by demolition certain oil properties in the Philippine Islands which had belonged to the respondents and over which USAFFE had exercised complete dominion and control since December 12, 1941. The operative facts surrounding such destruction were contested in the Court of Claims by the petitioner herein, and that Court, after a lengthy trial of the issues raised, resolved the dispute to allow a recovery by the respondents under the "just compensation" provisions of the Fifth Amendment.

The instant petition in essence seeks to have this Court review the factual basis of decision of the Court of Claims. Accordingly, we deem it necessary to advert briefly to the facts as found by the Court in support of its judgment.

The Facts

On December 8, 1941, Manila Time, when the United States declared war on Japan, the respondents (hereinafter sometimes referred to as the oil companies) were the owners of sizable quantities of petroleum products and extensive terminal facilities for the storage and the distribution thereof, located in part in a section of Manila known as Pandacan (R. 30-31, 44-45). Since such terminals represented the only practical and immediate source of petroleum products in the Philippines, the United States Army had early formulated war plans under which, in the event of an emergency, it would take over complete control not only of the facilities and supplies of the oil companies but also of their operating personnel (R. 30-32, 45). Moreover, the intention of the Army, as contained in the war plans, to

take and use the properties of the oil companies in the event of war was fully known to, and acquiesced in by, the oil companies (R. 31-33, 45).

To the extent that the war plans anticipated and authorized the taking and use of the properties of the oil companies in the event of war, they were never changed by General MacArthur when he became the Commanding General of USAFFE in June of 1941, although he did order substantial revision of the basic tactical strategy as originally conceived by his predecessors for the defense of the Philippines against attack (R. 33-34).

Shortly after the outbreak of war—specifically on December 12, 1941—General MacArthur, through his Chief of Staff, issued orders to the Chief Quartermaster, USAFFE, under which the latter officer was directed to, and under which he did in fact, take control of the operation of supply and distribution of the petroleum products of the oil companies and of the facilities and operating personnel of the oil companies (R. 36, 45-46). In that regard representatives of the oil companies were advised, in a meeting called by the Army to effectuate its taking of the oil properties, that the Commanding Officer of the Quartermaster Depot, under the command of the Department Quartermaster, would be actively in charge of the properties (R. 36-37, 45-46). At the same time the Department Quartermaster told the Chief of the Real Estate Division of the Quartermaster Office that "we have taken over Pandacan, lock, stock, and barrel" (R. 37). Thereafter, the Pandacan properties of the oil companies were subject to the exclusive control of the Army (R. 36-38, 41, 48).

Although in the very early days of the war General MacArthur had issued an order directing every officer who

took property from any civilian owner to give a receipt therefor (R. 36), the oil companies were not at first given any such receipt. Upon the request of a representative of one of the oil companies, however, General MacArthur's Deputy Chief of Staff agreed that the oil companies were entitled to something in writing and stated that the Commanding Officer of the Quartermaster Depot was working on the matter and would attend to it in due course (R.38). No such writing was ever received (R. 38), although under date of December 25, 1941, the Chief Engineer, USAFFE, did address to each of the oil companies a letter, signed in his own name by command of General MacArthur, advising the oil companies that their properties had been "requisitioned by the U. S. Army" and directing that the operating personnel of the oil companies "remain on duty under the direction of the U. S. Army and obey any instructions given them by the U. S. Army". At least one of the oil companies received in addition a written receipt for its properties from the USAFFE officer placed in charge thereof after Manila was declared an Open City (R. 39, 46).

On December 31, 1941, in fulfillment of a specific military plan, the properties of the oil companies were destroyed by Army personnel acting under orders of the Chief Engineer, USAFFE, such destruction having been accomplished in order to prevent the facilities and the petroleum products remaining therein from falling into enemy hands (R. 41-42, 46).

After liberation of the Philippines in February of 1945, the Army continued to occupy the site of the Pandacan terminals. However, in response to repeated requests of the oil companies, as it finished with its use of portions of the land from time to time during 1945 and 1946 it returned

the same to the oil companies until all the land was once again in their possession (R. 41).

The oil companies have been paid by the petitioner for all stocks of petroleum products that were destroyed as a result of the demolition of the properties on December 31, 1941 (R. 46). They have also been paid for various tank cars, trucks and other items of equipment which were taken by the Army but never returned to the oil companies (R. 46). With an inconsistency, however, that simply will not bear analysis the petitioner has refused to pay the oil companies for the remaining facilities which were taken and used by the Army prior to December 31, 1941, and which were subsequently destroyed as a result of the demolition referred to above (R. 42).

Upon the basis of the foregoing facts, the respondents argued in the Court below that there had been a taking of their properties on December 12, 1941, for which, because the properties were not returned, just compensation was payable under the Fifth Amendment to the Constitution of the United States and under the Requisition of the Military Materials Act*. Additionally, the respondents argued that the destruction of their properties on December 31, 1941, was not in fact a loss incident to battle or due to the consequential ravages of war but was, on the contrary, a delib-

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*Act of October 16, 1941, 55 Stat. 742-43 (1942), as amended, 50 U. S. C. App. §§ 721-24 (1948). Under that Act property could be requisitioned for the defense of the United States if it was first determined (i) that the use of such property was needed for the defense of the United States, (ii) that such need was immediate and impending and such as would not admit of delay or resort to any other source of supply and (iii) that all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms had been exhausted—but only upon the payment of just compensation.

erate and intentional act—a sacrifice of their properties calculated to benefit the war effort and the public generally although to the immediate and direct damage of the respondents alone. It was contended that, as is the case in all such sacrifices for the public good, equality of sacrifice is the rule dictated by justice and that, accordingly, the respondents were entitled to just compensation under the provisions of the Fifth Amendment and also under its statutory implementation.

The Court of Claims rejected the argument that there had been a taking of the properties on December 12, 1941 (R. 47-48);* and although the respondents do not agree with such ruling, a question with regard thereto is not raised by the instant petition and is not, therefore, before the Court for consideration at this time.

The Court of Claims also refused to consider the applicability of the Requisition of the Military Materials Act to the claims of the respondents for just compensation. It did, however, meet squarely the factual issue of deliberate and intentional taking as against a loss incident to battle, and a majority of the Court found itself persuaded to the

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*Our argument was that the exclusive control over all the properties and operating personnel of the oil companies contemplated in the war plans and actually exercised after the outbreak of war necessarily constituted a compensable taking of the facilities as well as of the product—just as the taking of possession and operating control of the properties involved in *United States* v. *Pewee Coal Company*, 341 U. S. 114 (1951), was held to be a taking for the consequences of which the Government was held to be responsible. In rejecting that argument the Court of Claims placed principal reliance on *Safeway Stores, Inc.* v. *United States*, 118 Ct. Cls. 73 (1950), in which, although just compensation was held to be payable for a quantity of meat taken pursuant to certain Government "set-aside" orders, compensation was not awarded for a taking of the facilities (slaughterhouses and meat-packing equipment). Quite unlike the instant cases, however, in the *Safeway* case the facilities were returned intact to the owner, and it was not contended in the Court of Claims that compensation was payable for their taking.

former view. Judgment was accordingly entered for the respondents, with a determination of the exact amount of recovery being reserved for further proceedings under Rule 38(c) of the Rules of the Court of Claims.*

The Questions Presented

Contrary to the position taken in the petition herein (Pet. p. 2), there are really two questions presented by these lawsuits in their present posture. The first, which is one only of fact, is whether the loss sustained by the respondents was occasioned by a deliberate and intentional act of destruction (as against destruction due to the so-called incidental ravages of war, *e.g.*, by artillery or bombardment during the course of battle, in recapturing a town from the enemy, etc.). The second question, which is one of law, is whether a deliberate and intentional destruction by United States military forces, to deny its use to the enemy, of specific non-enemy property located in non-enemy territory (such property then being used and controlled by the United States military forces) is such a taking of private property for public use as is compensable under the Fifth Amendment to the Constitution of the United States.**

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*We agree with the conclusion reached by the petitioner (Pet. pp. 2-3, fn. 2) that a judgment of the Court of Claims on the issue of liability alone is reviewable on certiorari before determination of the amount of damage sustained. Our position is, however, that the judgment of the Court of Claims herein on that issue is correct and should not be reviewed by this Court. If a review thereof is to be granted, we also agree with the petitioner that such should be concluded prior to a trial in the Court of Claims of the complex and protracted issues of fact and law involved in a determination of the amount of damage sustained by the respondents in these cases.

**The respondents concede that liability does not attach under the Fifth Amendment for property destroyed by the so-called incidental ravages of war. *Perrin* v. *United States*, 4 Ct. Cl. 543, 547-48 (1868);

Summary of Argument

The argument which follows will be directed and limited to the following propositions:

(a) the decision of the Court of Claims rests upon a determination of questions of fact which should not be reviewed by this Court;

(b) the principle of law relied on by the Court of Claims in rendering judgment for the respondents upon the facts as found by it has been consistently recognized and enforced by this Court and by the Court of Claims in an unbroken line of decisions, by the Congress, by international tribunals and commissions and by the Department of State of the United States; and

(c) the decision of the Court of Claims is not in conflict with any decision of this or any other Court.

ARGUMENT

POINT I

THE DECISION OF THE COURT OF CLAIMS RESTS UPON A DETERMINATION OF QUESTIONS OF FACT WHICH SHOULD NOT BE REVIEWED BY THIS COURT.

Although the petitioner has consistently urged herein that there was not any taking by the United States Army at any point in time, the Court of Claims has found as a fact that on December 27, 1941, the Army "requisitioned all

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see *Omnia* v. *United States*, 261 U. S. 502, 510 (1922); *United States* v. *Pacific Railroad*, 120 U. S. 227, 234-35 (1887); *Aleutian Livestock Company, Inc.* v. *United States*, 96 F. Supp. 626 (1951), *cert. denied*, 342 U. S. 875 (1951).

remaining petroleum stocks, and all storage and handling facilities at the Pandacan terminals of the oil companies" (R. 41-42), and that such requisition "was in anticipation and for the purpose of destruction to prevent items of military value from falling into the hands of the enemy" (R. 42). Based upon that finding the majority of the Court reasoned as follows (R. 54):

> ". . . The Government does not attempt to insure its citizenry against losses due to the ravages of war inflicted by our own or enemy forces in the conduct of a campaign. But when it is determined that a specific person's property because of its nature or location is so essential to the war effort that it must be taken and put to use for the good of the nation, it is our belief that the public generally should bear the cost of acquisition. . . ."

And in concluding that the respondents were entitled to recover under the Fifth Amendment, it expressly found that (R. 55):

> ". . . the power of the Federal Government, derived from and limited by the Constitution does not extend to the deliberate destruction of an individual's property for the common cause without the payment to the owner of just compensation."

The dissenting judges clearly recognized that, at least in the first instance, the basic question involved was one of fact. Thus, the opinion of the minority states (R. 58):

> "It is written that private property may not be taken for public use without just compensation.
>
> "On the other hand it is well recognized that property destroyed in actual battle by either side does not call for compensation. . . .

> "Between the application of these two recognized principles is a twilight zone the boundaries of which are difficult to determine. *The differences are factual rather than fundamental.*" (Emphasis supplied.)

It then adverted to certain facts which it felt to be controlling (not any of which is, we submit, supported by the record in these cases) and indulged in a number of speculations* to reach the conclusion that (R. 61):

> ". . . the loss for which compensation is sought here, considered in its context of time and place, must be regarded in law *as what it was in fact*—a loss incident to battle . . .
>
> ". . .
>
> ". . . I can reach no other conclusion than that the destruction was due to battle conditions." (Emphasis supplied.)

It is, then, perfectly evident that the dissenting judges disagreed with the majority of the Court only to the extent that the latter had found as a fact that destruction of the property of the respondents was the result of a deliberate and intentional taking as against a destruction incident to battle.

---

*The petitioner has engaged in similar speculations (Pet. pp. 12-13) as to what *might* have happened to the properties of the respondents had they not been deliberately destroyed by the United States Army to deny their use to the enemy. Totally aside from the fact that the record is barren of testimony justifying the same, such speculations cannot and do not have any probative value at all with regard to a decision either on the instant petition or otherwise.

(a) *Determinations of fact made by the Court of Claims are not reviewable by this Court.*

It has long been held, and we do not know of any decision to the contrary, that questions of fact fully resolved by the Court of Claims will not be reviewed by this Court. A typical judicial expression of that established proposition is found in *United States* v. *Russell,* 13 Wall. 623 (U. S. 1871), which involved various steamboats owned by Russell that had been impressed into military service by officers of the Union forces. In an action brought in the Court of Claims to recover just compensation for such taking and use, the defendant had invoked the provisions of an act that withdrew from the jurisdiction of the Court of Claims "any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the army or navy . . . engaged in the suppression of the rebellion." The Court of Claims had found as a fact that the steamboats had not been appropriated and had held the jurisdictional statute inapplicable. In refusing to review that finding, this Court wrote as follows (p. 631):

> "Special reference is made in behalf of the appellants to that provision, and the argument is that it is decisive to show that the decree in this case is erroneous. Support to that proposition is chiefly drawn from the signification attributed to the word appropriation, and from certain remarks of this court in one of its recent decisions. Those remarks were made in respect to a claim where a military order was issued for the seizure of certain real estate for the purpose of compelling a lease of the premises, and the findings of the court show that the agreement for the lease was concluded under the pressure of that order. Apart from that it also appeared that

> the premises belonged to an insurgent in the rebel army, and the Court of Claims also found that the contract was void on that account. Applied as those remarks must be to the case then under consideration no doubt is entertained that they were correct, but they cannot be applied to the case before the court, as the conclusion to which they would tend would contradict the findings of the court below in matters of fact, which cannot be reviewed in this court."

See also *United States* v. *Omaha Tribe of Indians*, 253 U. S. 275 (1920); *Luckenbach S. S. Co.* v. *United States*, 272 U. S. 533 (1926); *Chesapeake & Potomac Telephone Co.* v. *United States*, 281 U. S. 385 (1930); *American Propeller & Manufacturing Co.* v. *United States*, 300 U. S. 475 (1937); *United States* v. *Esnault-Pelterie*, 303 U. S. 26 (1938); *United States* v. *Penn Foundry & Manufacturing Co., Inc.*, 337 U. S. 198 (1949). As was said by this Court in the *Omaha Indians* case with regard to a finding of the Court of Claims (p. 281):

> ". . . it is either a finding upon a mere question of fact, or at most a finding of mixed fact and law where the question of law is inseparable. In the latter case, as in the former, the finding, on familiar principles, is not reviewable. *Ross* v. *Day*, 232 U. S. 110, 116-117, and cases cited. . . ."

(b) *The present cases are factually unique and do not present a question of general importance.*

The principal alleged reason advanced by the petitioner (Pet. p. 6) for granting its application for certiorari is that the decision is of importance not only on the facts of these cases but also to the entire "scope of the war-time liabilities of the United States". But it is obvious from the

statement of facts contained in this brief and also in the instant petition that the Court of Claims was dealing with an essentially unique situation—one which in point of fact is only of academic public interest and of limited precedential value.* Thus, the formulation of war plans specifically relating to the properties of the oil companies, the action of the military taken pursuant to such plans under direct orders of General MacArthur, the elements of acquisition, use and exclusive control all pre-dating the ultimate destruction of the properties for denial purposes—such facts, and others to which we have earlier adverted, clearly point up how peculiar and personal only to this litigation is the decision reached herein by the Court of Claims.

We believe, of course, that that decision is entirely correct to the extent that it has found a deliberate denial taking and has held the same to be compensable under the Fifth Amendment.** However that may be, we respectfully submit that, since the instant petition seeks only a review by this Court of unique questions of fact which were properly resolved and applied by the Court of Claims, it should be in all respects denied.

---

*The petitioner has suggested (Pet. p. 6) that there are now pending in the Court of Claims a number of other cases involving the loss of property under "comparable" or "probably" the same circumstances as were here found to exist. Since counsel for the petitioner herein, as counsel for the Government in all such cases, must by now be quite familiar with their factual background, we do not believe that such an obviously make-weight argument can be seriously considered as a reason for granting the instant petition. We are not aware of the existence of any other case involving factual circumstances even remotely comparable to the circumstances of the instant cases.

**The contentions of the respondents which were argued to, but rejected by, the Court of Claims are not before this Court on the instant petition.

POINT II

THE COURT OF CLAIMS CORRECTLY APPLIED TO ITS FINDINGS OF FACT AN ESTABLISHED AND CONSISTENTLY RECOGNIZED PRINCIPLE OF CONSTITUTIONAL AND INTERNATIONAL LAW.

Having found that the losses sustained by the respondents resulted from a deliberate and intentional taking by the United States Army, the Court of Claims, in holding the same to be compensable, applied a principle of law which has been recognized and enforced since the very earliest days of our constitutional history. Such principle, briefly stated, is that for the deliberate and intentional destruction by military forces, to deny its use to the enemy, of specific non-enemy property located in non-enemy territory, just compensation must be paid.

A number of the authorities in which that principle has been reviewed and developed were discussed at length in the majority opinion of the Court below (R. 49-53). Accordingly, we deem it necessary here to set forth only a sampling of the judicial language upon which its application herein is based.

In *Mitchell* v. *Harmony*, 54 U. S. 115 (1852), Chief Justice Taney made perhaps the earliest judicial direction that just compensation be paid for property destroyed to deny its use to the enemy, stating in that regard (p. 113):

> "There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for

public use. Unquestionably, in such cases, the government is bound to make full compensation to the owner . . ."

And in *Dow* v. *Johnson,* 100 U. S. 158 (1879), Mr. Justice Field saw fit to refer to the *Mitchell* case as follows (p. 169):

> "We fully agree with the presiding justice of the Circuit Court in the doctrine that the military should always be kept in subjection to the laws of the country to which it belongs, and that he is no friend to the Republic who advocates the contrary. The established principle of every free people is, that the law shall alone govern; and to it the military must always yield. We do not controvert the doctrine of Mitchell v. Harmony, reported in the 13th of Howard; on the contrary, we approve it. . . ."

The Court of Claims was early called upon to give application to the principle and did so unequivocally—first in *John P. Baldwin* v. *United States,* Rep. No. 259 from the Court of Claims to the House of Representatives, 36th Cong., 2d Sess. (1860-61), and later in *Grant* v. *United States,* 1 Ct. Cl. 41 (1863), and in *Wiggins* v. *United States,* 3 Ct. Cl. 412 (1867). Each of those cases involved a deliberate destruction of property to deny its use to the enemy, and in each a recovery of just compensation was allowed. Typical of the language used is the following quotation from the *Grant* opinion, during the course of which the Court stated (p. 50):

> "Private property must not only be taken upon urgent necessity, but for public use, in order to fix the liability of the government to make compensation. Was the destruction of this property a taking of it for public use? It is almost of equal public im-

portance that military supplies be kept from the use of the enemy, as that they minister to the support of our own armies. Writers on public law do not discriminate between property destroyed to prevent it from falling into the hands of an enemy, and property taken for the actual sustenance of our own military forces. In both cases it is treated as a taking for public use. . . ."

"We hold, in this case, that the property was destroyed by the rightful order of the commanding officer, and upon an urgent and pressing necessity, and to prevent it from falling into the hands of the public enemy and those hostile to the United States; that it was a taking for public use; and that the government is bound under the Constitution to make just compensation to the owner. The legal duty to make compensation raises an implied promise to do so; and here is found the jurisdiction of this court to entertain this proceeding."

And in the *Wiggins* case, the Court of Claims emphatically reaffirmed the rationale of the *Grant* decision, as follows (p. 422):*

"We do not see how this case can be distinguished in principle from that of *Grant* v. *The United States*, 1 C. Cls., p. 41. There the property of a citizen, in one of the Territories of the United States, was destroyed to prevent it from falling into the hands of the insurrectionary forces. Judge Wilmot reviews

*Other cases in which the *Grant* decision has been cited with approval include *Meade* v. *United States*, 2 Ct. Cl. 224, 275 (1866); *Perrin* v. *United States*, 4 Ct. Cl. 543, 547 (1868) (pointing up the distinction between a deliberate denial taking and a destruction during the course of military operations); *Pugh* v. *United States*, 5 Ct. Cl. 113, 117 (1869); *Booth & Company* v. *United States*, 62 Ct. Cl. 288, 295 (1926); *Royal Holland Lloyd & United States*, 73 Ct. Cl. 722, 733 (1931); *Miller* v. *Horton*, 26 N. E. 100, 102 (Mass. 1891—opinion by Judge, later Mr. Justice, Holmes).

> at length the grounds of the claim, and the authorities bearing upon the subject, and shows most clearly and conclusively that, whether the property be taken and appropriated by right of eminent domain, or destroyed to prevent other or greater injury to the public, the party is entitled to compensation. That this results as well from the principles of natural justice and equity as from the constitutional injunction to make compensation for private possessions devoted to public ends. We are entirely satisfied with the grounds there assumed, so far as they are applicable to the facts in this case, and can add nothing to the cogency or conclusiveness of the reasoning. Nor is it necessary to support it by further citations of authorities."

Shortly after the *Grant* decision, and while the War between the States was still in progress, the Congress enacted legislation removing from the jurisdiction of the Court of Claims claims against the United States based on acts of the Army or Navy in the suppression of the rebellion. See, *e.g.*, Act of July 4, 1864, 13 Stat. 381 (1864-1865). It is for that reason that the Court of Claims in cases subsequent to the *Grant* decision did not continue to allow compensation for a denial taking during the War between the States. *Cf. Presbyterian Church* v. *United States*, 33 Ct. Cl. 339 (1898); *Walker* v. *United States*, 34 Ct. Cl. 345 (1899).*

*The petitioner has referred to the *Presbyterian Church* and *Walker* cases as establishing a principle contrary to that followed in the *Grant* and *Wiggins* cases (Pet. p. 9). The distinction is found, of course, in the jurisdictional statutes under which the former cases were decided. Thus, in *Myers* v. *United States*, 22 Ct. Cl. 80 (1887), in which the Court of Claims held to be beyond its jurisdiction a claim for the burning of a boat to prevent its falling into Confederate hands, the Court said (p. 81):

> "However just this claim may be, the court has no power to consider it . . ."

Before the enactment of legislation empowering the Court of Claims to enter a judicially enforceable judgment against the Government, the Congress was frequently called upon to consider claims in the nature of a denial taking. The obligation to compensate under such circumstances was consistently recognized and discharged. See, *e.g.*, 6 Stat. 147, 150, 151, 153, 155, 186, 188, 194, 195 (1790-1845); 14 Stat. 617 (1866-1867); 16 Stat. 76 (1869).

International tribunals and mixed claims commissions have also considered the compensability of a denial taking and have held, in line with the foregoing authorities, that just compensation must be paid. See, *e.g.*, *Crutchett (Gt. Br.)* v. *United States*, Mixed Commission on British-American Claims, May 8, 1871, U. S. For. Rel. 1873, Vol. III 46-47; *Martin (Gt. Br.)* v. *United States, id.* at 51; *McDonald (Gt. Br.)* v. *United States, id.* at 54-55; *Turner (Gt. Br.)* v. *United States, id.* at 55; *Barrington (U. S.)* v. *Mexico*, Commission under the Convention of July 4, 1868, V Moore's Internat. Arb. at 3674; *Putegnat's Heirs (U. S.)* v. *Mexico, id.* at 3718-20 (and similar cases there collected); *Chourreau (Fr.)* v. *United States*, Commission under the Convention of January 15, 1880, *id.* at 3705; *Bertrand (Fr.)* v. *United States, id.* at 3705-06; *Labrot (Fr.)* v. *United States, id.* at 3706; *cf.* the argument for the United States in *Jardel (Fr.)* v. *United States, id.* at 3700.

An identical view was expressed by the Government of the United States in a letter dated May 22, 1929, to the League of Nations, Preparatory Committee of the Conference for the Codification of International Law. See V Hackworth, Digest of International Law (1943) at 705-06. Indeed, our Department of State had placed itself forcibly in accord with the principle when, in espousing the

claim of an American corporation against the British Government for the destruction during World War I of certain properties to deny their use to the enemy, it wrote through diplomatic channels as follows (U. S. For. Rel. 1926, Vol. II at 332, 335):

> "It will be perceived from the foregoing discussion that . . . the liability of a government to indemnify owners of property destroyed to prevent its falling into the hands of the enemy is established.
>
> "...
>
> "My Government feels that the facts of the present case are so clear and the applicable principles of law so elementary that there is occasion only for discussion of the amount of indemnity to be paid. . . ."

Further authority in support of the principle that a denial taking is compensable may be found in the teachings of the many learned text writers who have dealt with the subject. See, *e.g.*, Vattel, Law of Nations, Bk. III, c. 15, § 232 (1760); Grotius, Bk. 2, c. 14, § 7; Whiting on War Powers (43d ed. 1871) 17-18, 340; Taylor, International Public Laws (1901) 556-57, 701-04; II Halleck, International Law (4th ed. 1908) 70-71; II Oppenheim, International Law (2d ed. 1912) 446-49; Spaight, War Rights on Land (1911) 510-512; Holland, The Law of War on Land (1918) 68; 2 Hyde, International Law (2d ed. 1945) 957-58; 2 Nichols on Eminent Domain (3d ed. 1950) § 7.515.

It is, therefore, abundantly clear that in holding the respondents entitled to just compensation for the deliberate and intentional destruction of their property to deny its use to the enemy, the Court of Claims was giving correct

application to a principle of constitutional and international law which has been consistently recognized and enforced in this country.

POINT III

THE DECISION OF THE COURT OF CLAIMS IS NOT IN CONFLICT WITH ANY DECISION OF THIS OR ANY OTHER COURT.

The petitioner argues (Pet. p. 10) that "rulings denying compensation for losses suffered *in other circumstances* through destruction or seizure as the result of hostilities suggest that the decision below is incorrect".* We do not, of course, contend that there are not "other circumstances" under which the destruction of private property would be non-compensable (see *e. g., supra* at pp. 7-8, fn.). We do, however, contend that in light of the circumstances disclosed by the affirmative findings in these cases, the only possible principle of law which could have been applied is the one that was applied herein by the Court of Claims.

Only a brief discussion of the "other circumstances" referred to by the petitioner is necessary to show that the operative facts there involved (and, therefore, the rules of law there found applicable) were demonstrably different from the ones here found by the Court of Claims.

In *Juragua Iron Co.* v. *United States*, 212 U. S. 297 (1909), and also in the *The Venus*, 8 Cranch 253 (1814), the property involved was located in *enemy* territory. Compensation for its loss was denied—but under the accepted

*Consistent with the approach adopted by it in the Court of Claims, the petitioner ignores almost completely the very numerous authorities which give *direct* and uncontrovertible support to the position urged by the respondents and followed by the Court of Claims.

theory that all property located in enemy territory is enemy property. See also *The Gray Jacket*, 72 U. S. 342, 369-70 (1866); *Mrs. Alexander's Cotton Case*, 69 U. S. 404, 418-19 (1864); 1 Bynkershoek, Laws of War, c. V.* Similarly, confiscation by the United States of property belonging to the *enemy* or used in *hostile* enterprises against the United States is proper in time of war and does not subject the Government to a claim for compensation. See, *e.g.*, *United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1 (1926); *Jecker* v. *Montgomery*, 18 How. 110 (1855). However, none of those situations was found to exist in the present cases—which were held to involve only the deliberate destruction of *non-enemy* property located in *non-enemy* territory being used for *loyal* purposes.

Moreover, decisions like *Omnia* v. *United States*, 261 U. S. 502 (1923), *United States* v. *Irwin*, 127 U. S. 125 (1888), and *Aleutian Livestock Company, Inc.* v. *United States*, 96 F. Supp. 626 (Ct. Cl. 1951), *cert. denied*, 342 U. S. 875 (1951), involving *consequential* damage arising out of the valid exercise of sovereign power, are manifestly foreign to these lawsuits for the obvious reason that there was nothing consequential about the damage suffered by these respondents. It was immediate damage and direct damage, intentionally inflicted upon them by premeditated Army action and for that reason compensable—as the Court

*The reference in the petition (Pet. p. 14) to Borchard, Diplomatic Protection of Citizens Abroad (1915), is to a part of the text likewise dealing with the destruction of property located in enemy territory. However, in later discussions the learned author affirms the rule that a deliberate denial taking of non-enemy property is compensable, stating (*id.* at pp. 262-64) that "the seizure [for military purposes] of private property for the public use and its loss and destruction while so employed . . . warrants an indemnity to the owner." In that regard he cites and discusses with approval, among others, the *Mitchell*, *Grant* and *Wiggins* cases referred to *supra* at pp. 14-17.

of Claims has held in line with the numerous authorities referred to under Point II above.

Additionally, the petitioner invites attention to allegedly analogous cases either decided under or involving an interpretation of various *legislative enactments* imposing emergency measures of regulation or control. See, *e.g.*, *St. Regis Paper Company* v. *United States*, 110 Ct. Cl. 271 (1948), *cert. denied*, 335 U. S. 815 (1948) (legislation allocating and controlling the use of war materials); *Bowles* v. *Willingham*, 321 U. S. 503 (1944) (price-control legislation); *Falbo* v. *United States*, 320 U. S. 549 (1943) (Selective Service Act); *Lichter* v. *United States*, 334 U. S. 742 (1948) (excess profits legislation); *Hamilton* v. *Kentucky Distillers Co.*, 251 U. S. 146 (1919) (War-Time Prohibition Act); *Lawton* v. *Steele*, 152 U. S. 133 (1894) (legislative exercise of State police power). Had the Congress enacted legislation purporting to deny to the respondents herein the right to recover for the damage deliberately inflicted upon them or had the Congress enacted legislation in any way affecting the jurisdiction of the Federal courts to hear and decide claims for just compensation of the sort here presented, the petitioner might refer to such decisions with better grace.* However, absent any such affirmative legislation, the jurisdiction of the Court of Claims (and of this Court) stands unimpaired, and the only reasonable inference to be drawn from such Congressional silence is that, in line with established constitutional principles of fairness and justice, compensation is to be paid

*As was pointed out above (*supra* at p. 17) the Congress did enact such legislation in connection with claims arising out of the War between the States, its reason being that, in accordance with principles of sovereign immunity, it rather than the Court of Claims should assume the responsibility of determining the claims to be allowed.

to the respondents upon their application to the Courts for enforcement of their claims.*

Perhaps the only judicial expression to which the petitioner can turn for even a semblance of comfort is set forth as a *dictum* in *United States* v. *Pacific Railroad*, 120 U. S. 227 (1887)—not at all "the leading case", as the petitioner so self-servingly characterizes it (Pet. p. 7). A brief discussion of that case will demonstrate conclusively its inapplicability to the situation here before the Court.

The *Pacific Railroad* controversy arose out of activities of the Union army during the War between the States and involved, among others, a claim by the Government for the cost of rebuilding for the Railroad certain bridges that had been destroyed by the enemy and by the Union forces. The Court held that, to the extent that the bridges were destroyed by Union forces, such destruction was under the circumstances involved lawful—a conclusion which followed from the ruling of this Court in *Mitchell* v. *Harmony*, *supra* at pp. 14-15. It also concluded that the claim of the Government for rebuilding could not properly be upheld. However, in the course of his opinion Mr. Justice Field discussed the question of the compensability of war damage generally and stated that "the destruction or injury of private property in battle, or in the bombardment of cities and towns, and in many other ways in the war, had to be borne by the sufferers alone as one of its consequences" (120 U. S. at 234).**

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*Indeed, the Requisition of Military Materials Act (*supra* at p. 5) stands as compelling evidence of the intention of the Congress that the judicial rather than the legislative branch of the Government continue to hear and dispose of requisition claims of the sort here presented to the Court of Claims.

**By the time the action in the Court of Claims had been commenced, that Court was without jurisdiction over certain claims against the Government arising out of the War between the States. See *supra* at p. 17.

It is evident that the gratuitous *dictum* in which Mr. Justice Field indulged referred to the so-called incidental ravages of war (and not to a deliberate and intentional denial taking), so that it cannot have any possible application to the present cases, in which the Court of Claims has expressly found that the destruction did *not* result from the incidental ravages of war. Moreover, the doctrine of the *Mitchell*, *Grant* and *Wiggins* cases—that a deliberate denial taking is compensable under the Fifth Amendment—was not anywhere rejected by Mr. Justice Field. Quite to the contrary, such doctrine was *expressly approved* when the Court, in paraphrasing Vattel's Law of Nations, said that "[damages] done by the state deliberately . . . as when his standing corn or his storehouses are destroyed to prevent their being of use to the enemy . . . are to be made good to the individual, who should bear only his quota of the loss" (120 U. S. at 234).

Finally, the petitioner refers to the Philippine Rehabilitation Act, 60 Stat. 128 (1946), in a grasping attempt to establish a conflict of authority sufficient to warrant the issuance of a writ of certiorari herein (Pet. p. 13). Its argument in that regard breaks down as follows:

(a) the Act broadly provides for compensation for war losses, without regard to whether or not the circumstance of loss falls within any recognized principle of legal liability;

(b) certain of the losses covered in the Act might not otherwise have been legally compensable, *e.g.*, losses incurred by reason of enemy attack, looting, pillage, etc., compensation being allowed "as a matter of grace";

(c) therefore, since a denial taking is compensable under the Act, it is compensable "as a matter of grace".*

It is, of course, perfectly obvious that the reasoning employed by the petitioner simply does not follow. Moreover, while the respondents Standard-Vacuum and Caltex** might have obtained under the Act partial compensation in local currency for their war losses in the Philippines, the Act was never intended to limit in any way the legal liability of the United States for claims compensable without regard to its specific provisions or to require acceptance by a claimant of its limited benefits in lieu of the complete relief to which such a claimant would otherwise be entitled.

The foregoing discussion makes it abundantly clear that there is not any conflict in the decisions of this Court or of any other Court on the compensability of the losses sustained by these respondents under the circumstances found by the Court of Claims. Accordingly, the decision of the Court of Claims allowing a recovery for such losses, being in accord with every applicable authority—judicial or otherwise—does not warrant a review by this Court.

---

*The Presidential Veto Message referred to in the petition (Pet. p. 14) as supporting the proposition that a denial taking is compensable as a "matter of bounty rather than of strict legal right" is cited with complete inaccuracy. The legislative history of the vetoed bill shows that President Grant considered the destruction therein involved to have resulted solely from the so-called ravages of war (even though a majority of the Congress had found to the contrary). See, *e.g.*, Cong. Globe, 41st Cong., 3d Sess. 62-63, 97-103, 165-69, 295-304, 311-19 (1870-1871).

**The respondent Shell Philippines, a British corporation, would not qualify for benefits under the Act. See 50 U. S. C. A. App. § 1752 (Supp. 1951).

Conclusion

It is, therefore, respectfully submitted that for the foregoing reasons the petition for a writ of certiorari herein should be in all respects denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 16

THE UNITED STATES,
Petitioner,
v.
CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED and STANDARD-VACUUM OIL COMPANY,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR RESPONDENTS

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October 13, 1952.

INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION TO REVIEW	2
APPLICABLE CONSTITUTIONAL PROVISION	2
QUESTION PRESENTED	2
STATEMENT OF THE CASE	2
THE FACTS	3
THE DECISION BELOW	8
SUMMARY OF ARGUMENT	10
ARGUMENT	
THE COURT OF CLAIMS CORRECTLY HELD THAT THE UNITED STATES IS OBLIGATED UNDER THE FIFTH AMENDMENT TO PAY JUST COMPENSATION FOR PRIVATE PROPERTY WHICH IT TOOK AND USED FOR MILITARY PURPOSES IN WARTIME AND WHICH IT ULTIMATELY DESTROYED TO DENY ITS USE TO THE ENEMY	12
1. The decision below is in accord with long-settled principles of constitutional law established by judicial decisions under the Fifth Amendment	14
2. The decision below is in accord with non-judicial interpretation of the obligation imposed upon the United States by the Fifth Amendment	36
3. The principles of constitutional law applied by the court below are consistent with established principles of international law	43
4. Petitioner's arguments addressed to the expediency of compliance with its constitutional obligation do not afford any basis for challenging the correctness of the decision below	49
CONCLUSION	58

TABLE OF CASES

PAGE

John R. Baldwin v. *United States*, Rep. No. 259 from Court of Claims to House of Representatives, 36th Cong., 2d Sess. (1860-61) 20, 21

Barrington (U. S.) v. *Mexico*, Commission under the Convention of July 4, 1868, V Moore's Internat. Arb. 3674 45

Beasely v. *United States*, 21 Ct. Cl. 225 (1886) 25

Booth & Company v. *United States*, 62 Ct. Cl. 288 (1926) 27

Bowles v. *Willingham*, 321 U. S. 503 (1944) 35

Brown v. *United States*, 29 Ct. Cl. 394 (1894) 26

Campbell v. *United States*, 8 Ct. Cl. 240 (1872) 38

Conard v. *United States*, 25 Ct. Cl. 433 (1890) 26

Dow v. *Johnson*, 100 U. S. 158 (1879) 20, 35

Falbo v. *United States*, 320 U. S. 549 (1943) 35

Gratt v. *United States*, 1 Ct. Cl. 41 (1863) 10, 19, 21-24, 25, 26, 28, 43, 52

Hamilton v. *Kentucky Distilleries Co.*, 251 U. S. 146 (1919) 35

Hirabayashi v. *United States*, 320 U. S. 81 (1943) ... 35

Hirsh v. *Block*, 267 Fed. 614 (App. D. C. 1920) 20

International Paper Co. v. *United States*, 282 U. S. 399 (1931) 17

Jardel (Fr.) v. *United States*, Commission under the Convention of January 15, 1880, V Moore's Internat. Arb. 3700 45

Juragua Iron Co. v. *United States*, 212 U. S. 297 (1909) 33, 34, 35

Korematsu v. *United States*, 323 U. S. 214 (1944) .. 35

PAGE

Labrot (*Fr.*) v. *United States*, Commission under the Convention of January 15, 1880, V Moore's Internat. Arb. 3706 45
Lawton v. *Steele*, 152 U. S. 133 (1894) 13, 35
Lichter v. *United States*, 334 U. S. 742 (1948) 35
MacDonald (*Gt. Br.*) v. *United States*, Mixed Commission of British-American Claims, May 8, 1871, U. S. For. Rel. 1873, Vol. III 54-55 45
Madison Female Institute v. *United States*, 23 Ct. Cl. 188 (1888) 25-26
Mayor v. *Lord*, 18 Wend. 126 (N. Y. 1837) 33
Meade v. *United States*, 2 Ct. Cl. 224 (1866) 26
Miller v. *Horton*, 26 N. E. 100 (Mass. 1891) 27
Miller v. *Schoene*, 276 U. S. 272 (1928) 13
Ex Parte Milligan, 71 U. S. 2 (1866) 35
Mitchell v. *Harmony*, 54 U. S. 115 (1852) 10, 19-20, 31, 43
Myers v. *United States*, 22 Ct. Cl. 80 (1887) 25, 26
Nelson v. *United States*, 22 Ct. Cl. 159 (1887) 25
North American Storage Co. v. *Chicago*, 211 U. S. 306 (1908) 13
Omnia Commercial Company v. *United States*, 261 U. S. 502 (1923) 13, 39
Parham v. *The Justices*, 9 Geo. 341 (1850) 32
Perrin v. *United States*, 4 Ct. Cl. 543 (1868), *aff'd*, 12 Wall. 315 (U. S. 1870) 27, 39
Portsmouth Harbor Land & Hotel Company v. *United States*, 260 U. S. 327 (1922) 17
Presbyterian Church v. *United States*, 33 Ct. Cl. 339 (1898) 26, 28
Pugh v. *United States*, 5 Ct. Cl. 113 (1869) 27
Pumpelly v. *Green Bay Company*, 80 U. S. 166 (1871) 18
Respublica v. *Sparhawk*, 1 Dall. 357 (Pa. 1788) 32
Richards v. *Washington Terminal Company*, 233 U. S. 546 (1914) 17-18

PAGE

Royal Holland Lloyd v. *United States*, 73 Ct. Cl. 722 (1931) 27

Ruppert v. *Caffey*, 251 U. S. 264 (1920) 35

Safeway Stores, Inc. v. *United States*, 118 Ct. Cl. 73 (1950) 9, 18

Salomon v. *United States*, 86 U. S. 17 (1873) 18

St. Regis Paper Company v. *United States*, 110 Ct. Cl. 271 (1948), *cert. denied*, 335 U. S. 815 (1948) 13, 35

Taylor v. *Nashville & Chattanooga R. R.*, 6 Coldwell 646 (Tenn. 1868) 32

Tide Water Associated Oil Company v. *United States*, (Court of Claims No. 48333) 3

United States v. *Causby*, 328 U. S. 256 (1946) 17, 53

United States v. *General Motors Corp.*, 323 U. S. 373 (1945) 10-11, 13, 16-17, 31

United States v. *Great Falls Mfg. Co.*, 112 U. S. 645 (1884) 18

United States v. *Lynah*, 188 U. S. 445 (1903) 18, 20

United States v. *Omaha Tribe of Indians*, 253 U. S. 275 (1920) 15

United States v. *Pacific Railroad*, 120 U. S. 227 (1887) 29-33, 35

United States v. *Penn Foundry & Manufacturing Co., Inc.*, 337 U. S. 198 (1949) 15

United States v. *Pewee Coal Company*, 341 U. S. 114 (1951) 11, 15-16, 18, 31

United States v. *Russell*, 80 U. S. 623 (1871) 10, 14, 19, 20, 43

United States v. *United Mine Workers of America*, 330 U. S. 258 (1947) 17, 18

United States v. *Welch*, 217 U. S. 333 (1910) 18

Walker v. *United States*, 34 Ct. Cl. 345 (1899) 28, 29

Wiggins v. *United States*, 3 Ct. Cl. 412 (1867) 10, 19, 26, 27-28, 43

Youngstown Sheet & Tube Co. v. *Sawyer*, 343 U. S. 579 (1952) 11, 17

TABLE OF STATUTES

PAGE

Act of February 27, 1815, 6 Stat. 150 (1790-1845) . . 36

Act of March 1, 1815, 6 Stat. 151 (1790-1845), and 6 Stat. 152, 153, 155, 186, 188, 194, 195 (1790-1845) 37, 39

Act of April 9, 1816, 3 Stat. 261 (1790-1845) 39

Act for Relief of Colonel Mitchell, 10 Stat. 727 (1852-1855) 20

Act of March 3, 1863, 12 Stat. 765 (1860-1863) 36

Act of July 4, 1864, 13 Stat. 381 (1864-1865) 25, 37

Act of June 18, 1866, 14 Stat. 360 (1866-1867) 25

Act of July 28, 1866, 14 Stat. 370 (1866-1867) 25

Act of January 31, 1867, 14 Stat. 617 (1866-1867) . . 37

Act of February 21, 1867, 14 Stat. 397 (1866-1867) . . 25

Act of March 2, 1867, 14 Stat. 572 (1866-1867) 25

Jt. Res. No. 5 of December 23, 1869, 16 Stat. 368 (1869-1871) 25

Jt. Res. of June 23, 1870, 16 Stat. 66 (1869-1871) . . 37, 38

Act of January 17, 1871, 16 Stat. 76 (1869-1871) 38

Act of March 3, 1879, 20 Stat. 134 (1877-1879) 38

Act of March 1, 1881, 21 Stat. 89 (1879-1881) 38

Act of May 1, 1882, 22 Stat. 13 (1881-1882) 38

Act of March 3, 1883 (the Bowman Act), 22 Stat. 485 (1881-1882) 25, 28, 29

Act of July 5, 1884, 23 Stat. 28 (1883-1885) 38

Act of March 3, 1887 (the Tucker Act), 24 Stat. 505 (1886-1887) 25

PAGE

Fifth Amendment to the Constitution of the United States (U. S. Const. Amend. V) 2

26 Halsbury's Statutes of England 468 *et seq.* 56

Philippine Rehabilitation Act of 1946, 60 Stat. 128 (1946), 50 U. S. C. App. § 1752 (1948) 56, 57

Requisition of Military Materials Act of October 16, 1941, 55 Stat. 742-43 (1942), as amended, 50 U. S. C. App. §§ 721-24 (1948) 41, 42

Title 28, United States Code, Section 1255(1) 2

MISCELLANEOUS AUTHORITIES

American States Papers, Class IX, Claims, Nos. 243 (p. 424) 536 (pp. 752-53), 587 (p. 835) 38, 39

Borchard, *Diplomatic Protection of Citizens Abroad* (1915) 262-64 43

Cong. Globe, 32d Cong., 1st Sess. 398, 493, 502, 543, 547, 651, 659-61, 695-96, 707 (1852) 20

Cong. Globe, 38th Cong., 1st Sess. 1010, 2774, 2778, 2781, 3188, 3418, 3499, 3513, 3532, 3535, 3536, 3544, 3547 (1863-1864) 25

Cong. Globe, 41st Cong., 3d Sess., 312-13 .....40, 41

II Halleck, *International Law* (4th ed. 1908) 70-71 ..44, 45

Conference for Codification of International Law, *Bases of Discussion*, Vol. III, Supp. (League of Nations Pub. 1929, V. 10) 20, 22 48

V Hackworth, *Digest of International Law* (1943) 705-06 48

PAGE

Lawrence Report, H. Rep. No. 134, 43d Cong., 2d Sess. 38, 54

1924 Opinions of Solicitor of Department of State 438-44 46

10 Ops. Att'y Gen. 21, 25-27 (1861) 20

40 Ops. Att'y Gen. 250, 253 (1942) 20

Remarks of Chief Justice Casey Regarding the Passing of Judge David Wilmot, 3 Ct. Cl. XLVI (1867) 27

Sen. Ex. Doc. No. 42, 42d Cong., 3d Sess., p. 2 41

Taylor, *International Public Law* (1901) 556 43

U. S. For. Rel., 1926, Vol. II 316-35 ..... 46, 47, 48, 49

Vattel, *Law of Nations*, Bk. III, c. 15, § 232 (1760) 32

Whiting, *War Powers under the Constitution* (43d ed. 1871) 17-18, 24 ..... 35, 44

Wolff, *The Science and Method of War* (1934 ed. of II *The Classics of International Law*) § 830 43

Wormser, *Collection of International War Damage Claims* (1944) 157 43

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

THE UNITED STATES, *Petitioner,* *v.* CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED and STANDARD-VACUUM OIL COMPANY, *Respondents.*	No. 16

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR RESPONDENTS

Opinions Below

The majority and dissenting opinions of the Court of Claims (R. 44-61)* and the Special Findings of Fact (R. 30-44) which are made a part of the judgment of that Court entered herein on November 16, 1951 (R. 61) are reported at 120 Ct. Cl. 518 (100 F. Supp. 970).

*Unless identified by the symbol "II," record references are to pages in Vol. I of the printed transcript of record herein.

Jurisdiction to Review

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1255 (1).

Applicable Constitutional Provision

Fifth Amendment:

> ". . . nor shall private property be taken for public use, without just compensation."

Question Presented

Whether the United States is obligated under the Fifth Amendment to pay just compensation for private property which it took and used for military purposes in wartime and which it ultimately destroyed to deny its use to the enemy.

Statement of the Case

On December 31, 1941, representatives of the United States Armed Forces in the Far East (USAFFE) destroyed by demolition certain oil storage and distribution facilities in the Philippine Islands which had belonged to the respondents and over which USAFFE, in accordance with pre-existing war plans and in fulfillment of planned military policy, had exercised complete dominion and control since December 12, 1941. The operative facts surrounding and ante-dating such destruction were the subject of extensive proof in the Court of Claims, and that Court, after a lengthy trial of the issues raised, resolved the dispute to allow a recovery by the respondents under the "just compensation" provision of the Fifth Amendment.

Petitioner has not at any time disputed the taking and destruction of respondents' properties. It does, however, deny liability therefor, contending (a) that such properties were taken for the purpose of destroying them to prevent

their use by the enemy and (b) that a taking for such purpose is not compensable. The cases are now before this Court solely on the issue of liability presented by those contentions, the issue of damages having been reserved for future determination.

As it did in the Court of Claims, petitioner in this Court has chosen to frame its presentation of the cases almost without reference at all to the facts of intention to take, and the actual taking of, respondents' properties, as found by the Court of Claims in support of its judgment. Accordingly, we deem it necessary to state those facts.

The Facts

In early December of 1941 respondents were, and for a number of years prior thereto had been, engaged in the business of importing into and selling throughout the Philippine Islands a complete line of petroleum products. As an incident of that business they owned and operated throughout the Islands numerous oil storage and distribution facilities, including ocean terminals for receiving products shipped from the United States, the Netherlands East Indies and other oil-producing centers, and bulk plants for storing and distributing the products so received (FF 3, R. 30-31).

Caltex, Standard-Vacuum, Shell Philippines and Tide Water Associated* (hereinafter sometimes referred to, collectively, as the oil companies) each owned an ocean terminal on the Island of Luzon located in a section of the City of Manila known as Pandacan (hereinafter sometimes referred to, collectively, as the Pandacan terminals), such terminals being made up of oil storage tanks, pipelines, pumping equipment, dock facilities, warehouses, can-

* The claim of Tide Water Associated Oil Company has been settled and discontinued. *Tide Water Associated Oil Company* v. *United States* (Court of Claims No. 48333).

making machinery, motor equipment, rolling stock, etc., and petroleum products (FF 3, R. 30-31).*

Since such terminals represented the only practical and immediate source of petroleum products in the Philippines, the United States Army had early formulated war plans under which, in the event of an emergency, it would take over complete control not only of the facilities and supplies of the oil companies but also of their operating personnel (FF 1, 2, 4, 5, R. 30-31). Moreover, the intention of the Army, as contained in the war plans, to take and use the properties of the oil companies in the event of war was fully known to, and acquiesced in by, the oil companies (FF 7, R. 31-32).

In 1940 and 1941, and for a number of years prior thereto, all petroleum products used by the United States Army in the Philippines had been obtained from the oil companies under contract, on a day-by-day call or delivery basis. During that period the Army had on hand as a war reserve only a limited amount of petroleum products and had only limited facilities for the storage, handling and distribution of petroleum products (FF 8, R. 32).

In June, 1941, the Department Quartermaster (General Drake) called a meeting of officers on his staff and representatives of the oil companies in order to inform the oil

*Another such terminal belonging to Standard-Vacuum was located in part on the Island of Cebu and consisted of properties similar in nature to the properties comprising the Pandacan terminals of the oil companies (FF 36, R. 43). The Court of Claims held the Government liable on the claim of Standard-Vacuum for just compensation for the value of petroleum products at the Cebu installation destroyed on or about April 10, 1942, to deny their use to the Japanese, its decision being based upon the ground that what was done by the Army at Cebu on December 8, 1941, constituted a taking of such products for which just compensation was payable (R. 55-57). The Government did not petition for a review of that adjudication.

companies of the Army plan to take* and use in the event of war the petroleum products, the facilities and, because Army personnel would not be available to operate the properties when M-Day arrived, the operating personnel of the oil companies (FF 9, R. 32-33).

Shortly after the outbreak of war—specifically, on December 12, 1941—General MacArthur, through his Chief of Staff, issued orders to the Chief Quartermaster, USAFFE (General Drake), under which the latter officer was directed to, and under which he did in fact, take control of the operation of supply and distribution of the petroleum products of the oil companies and of the facilities and operating personnel of the oil companies (FF 14, 15, 16, R. 36-37). On that date representatives of the oil companies were advised, in a meeting called by the Army to effectuate its taking of the oil properties, that the Commanding Officer of the Quartermaster Depot, under the command of the Department Quartermaster, would be actively in charge of the properties (FF 15, R. 36). At the same time the Department Quartermaster told the Chief of the Real Estate Division of the Quartermaster Office that "we have taken over Pandacan, lock, stock, and barrel" (FF 16, R. 37).

Between December 12, 1941, and December 27, 1941, the properties of the oil companies were subject to the exclusive control of the Army (FF 17, R. 37). A control officer representing the Commanding Officer of the Quartermaster Depot was stationed at the terminals, and enlisted men, acting as security guards, commenced to patrol the area. All incoming orders for petroleum products were scruti-

*In referring to the intention of the Army, as contained in the war plans, to take and use the petroleum products, facilities and operating personnel of the oil companies in the event of war, the phrase "taking over" was used both by the representatives of the oil companies and by the many Army officers who were called to testify in the cases (FF 7, R. 31-32).

nized by the military; the control officers assisted in the supervision of civilian workmen (some of whom were in a labor pool established by the Army) engaged in packaging and loading petroleum products for shipment to the Army; and the personnel of the oil companies, while they remained on the job, were at all times subject to the authority of, and took instructions only from, Army personnel (FF 15-17, R. 36-37).

Under date of December 25, 1941, the Chief Engineer, USAFFE (General Casey), prepared a letter addressed to each of the oil companies and signed in his own name by command of General MacArthur. That letter, which was not delivered to its addressees until December 27, 1941 (FF 22, R. 39), is as follows (II R. 293):

HEADQUARTERS
UNITED STATES ARMY FORCES
IN THE FAR EAST
OFFICE OF THE COMMANDING GENERAL
MANILA, P. I.

IN REPLY REFER TO:

December 25, 1941

Asiatic Petroleum Co., Manila, P. I.
Tidewater Associated, Manila, P. I.
Caltex Corp., Manila, P. I.
Standard Vacuum Oil Co., Manila, P. I.

Dear Sirs:

Effective immediately all petroleum stocks, storage and handling facilities, etc., at your Manila, Pandacan oil depots are requisitioned by the U. S. Army. Any action deemed necessary for the destruction of this

property will be handled by the U. S. Army. However, your personnel must remain on duty under the direction of the U. S. Army and obey any instructions given them by the U. S. Army.

Your full and active assistance and cooperation are requested.

By command of General MacArthur:

(Signed) HUGH J. CASEY

HUGH J. CASEY
Colonel, C. E.
Engineers.

At least one of the oil companies received in addition a written receipt for its properties from the USAFFE officer placed in charge thereof after Manila was declared an Open City (FF 23, R. 39).

On December 27, 1941, the Chief Engineer, USAFFE, met with representatives of the oil companies and advised them that he was then in charge of their Pandacan terminals and urged upon them the necessity for expediting the delivery of petroleum products from the terminals to the Army (FF 24, R. 40).

Between December 27, 1941, and December 31, 1941, the Army continued its control over and use of the properties. An officer representing the Corps of Engineers was placed in active charge of the terminals; operations continued under the exclusive supervision of the Army, with shipments of petroleum products for the Army being expedited and a demolition network laid (FF 23, R. 39).

On December 31, 1941, the properties of the oil companies were destroyed by Army personnel acting under orders of the Chief Engineer, USAFFE, such destruction having been accomplished in order to prevent the facilities

and the petroleum products remaining therein from falling into enemy hands (FF 27, R. 41).

After liberation of the Philippines in February of 1945, the Army continued to occupy the site of the Pandacan terminals. However, in response to repeated requests of the oil companies, as the Army finished with its use of portions of the land from time to time during 1945 and 1946 it returned the same to the oil companies until all the land was once again in their possession (FF 28, R. 41).

The oil companies have been paid by petitioner for all stocks of petroleum products that were destroyed as a result of the demolition of the properties on December 31, 1941 (FF 31, 32, 33, R. 42).

Petitioner has also paid respondents Standard-Vacuum and Shell Philippines the value of certain tank cars, trucks and floating equipment located at their Pandacan terminals. Petitioner has refused, however, to pay respondents the value of the remaining facilities which were taken and used by the United States Army prior to December 31, 1941, and which were destroyed by the Army as a result of the demolition of the terminals on that date (FF 31, 32, 33, R. 42).

The Decision Below

On the basis of the foregoing facts, respondents contended in the Court of Claims that they were entitled, under the Fifth Amendment to the Constitution of the United States, to just compensation for their properties taken for public use; that such properties had been taken on December 12, 1941, from and after which date they were wholly deprived of all rights of ownership in and control over such properties; and, in any event, that such properties had been taken by formal requisition on December 27, 1941, and by the subsequent deliberate and intentional destruction thereof on December 31, 1941.

The Court of Claims, relying only upon its earlier decision in *Safeway Stores, Inc.* v. *United States*, 118 Ct. Cl. 73 (1950), rejected respondents' argument that the Army's acts with reference to the properties constituted a compensable taking of the Pandacan terminal facilities on December 12, 1941 (R. 47, 48).

The court held, however, that the formal requisitioning of the terminals on December 27, 1941, did constitute a compensable taking and that respondents' right to compensation was not impaired by the facts that the properties were taken in contemplation of destruction and that they were actually destroyed on December 31, 1941. In so holding, the court said (R. 54):

> "* * * The Government does not attempt to insure its citizenry against losses due to the ravages of war inflicted by our own or enemy forces in the conduct of a campaign. But when it is determined that a specific person's property because of its nature or location is so essential to war effort that it must be taken and put to use for the good of the nation, it is our belief that the public generally should bear the cost of acquisition. Ordinarily, time is not so much of the essence but that the ordinary procedures of eminent domain under civilian control are followed and just compensation determined and awarded as a matter of course. At times, however, the emergency may be so great and the time so short that an officer of the Government is justified in impressing the property summarily into service. Because the impressment is summary and dictated by immediate necessity would not seem to make it less an exercise of eminent domain. The Constitution provides that funds for the common defense shall be raised by a uniform method of taxation; it provides also that the owner of private property taken for public use—and the common defense is a public use—shall be justly compensated.

> "It appears to us that the destruction of the Pandacan terminals was a use thereof in the common defense and that a taking of plaintiffs' property for that purpose without making compensation therefor would be as much a violation of the Constitution as would a tax directed solely at a named individual."

Judgment was accordingly entered for the respondents, with a determination of the exact amount of recovery being reserved for further proceedings under Rule 38(c) of the Rules of the Court of Claims (R. 61).

Summary of Argument

I

The Court of Claims correctly held that the United States is obligated under the Fifth Amendment to pay just compensation for private property which it took and used for military purposes in wartime and which it ultimately destroyed to deny its use to the enemy. The question presented is not whether the circumstances under which private property is destroyed show a taking of that property by the United States, but whether an undisputed taking of private property is rendered non-compensable because accompanied by a purpose to destroy it. Petitioner's contention that such a taking is non-compensable is not supported by any authority. The decision of the Court of Claims is in accord with long-settled principles of constitutional law established by judicial decisions under the Fifth Amendment. *Mitchell* v. *Harmony*, 54 U. S. 115, 133-34 (1852); *United States* v. *Russell*, 80 U. S. 623, 627-29 (1871); *Grant* v. *United States*, 1 Ct. Cl. 41 (1863); *Wiggins* v. *United States*, 3 Ct. Cl. 412 (1867); *United States* v. *General Motors Corp.*, 323

U. S. 373, 378, 383-84 (1945); *United States* v. *Pewee Coal Company*, 341 U. S. 114, 117, 118-19 (1951); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 630-31 (1952).

II

The decision below is in accord with non-judicial interpretation of the obligation imposed upon the United States by the Fifth Amendment. The Congress, during periods when the Court of Claims was without jurisdiction to decide claims against the United States under the Fifth Amendment, has consistently recognized by private legislation the obligation of the United States to compensate owners of non-enemy property destroyed to prevent its falling into enemy hands.

III

The principles of constitutional law applied by the court below are consistent with principles of international law established without reference to the Constitution of the United States. The United States, through its Department of State, has formally presented to foreign countries its view that under international law a belligerent is obligated to indemnify the owner of non-enemy property destroyed to prevent its falling into the hands of an enemy.

IV

Petitioner's arguments addressed to the expediency of compliance with its constitutional obligation do not afford any basis for challenging the correctness of the decision below. The possibility that the fortunes of war might have resulted in non-compensable property loss to respondents is

criminate between property destroyed to prevent it from falling into the hands of an enemy, and property taken for the actual sustenance of our own military forces. In both cases it is treated as a taking for public use. In the case of the *American Print Works* v. *Lawrence*, (Zabriskie,) the Supreme Court of New Jersey affirm that 'the destruction of private property for public use is a taking of it within the meaning of the Constitution.'

"We hold, in this case, that the property was destroyed by the rightful order of the commanding officer, and upon an urgent and pressing necessity, and to prevent it from falling into the hands of the public enemy and those hostile to the United States; that it was a taking for public use; and that the government is bound under the Constitution to make just compensation to the owner. The legal duty to make compensation raises an implied promise to do so; and here is found the jurisdiction of this court to entertain this proceeding."

Shortly after the *Grant* decision, and while the War between the States was still in progress, Congress was pressed to enact legislation which would relieve certain loyal citizens from the hardships of war which were cast upon them by reason of their residence within the lines of the Confederacy or in loyal states in which hostilities were then being actively conducted.* In considering that matter Congress reviewed

*The War between the States, in which the conflict was between citizens of the same country, necessarily presented war-damage problems different from those arising out of the normal situation of country against country. Thus, considerations involving the loyalty of the owner of the property, its location at the time of damage (whether within Confederate or Union lines), the number of claims filed and the very real possibility of fraudulent claims suggested the desirability of having the Congress, rather than the Court of Claims, administer the requirements of the Fifth Amendment. However, no such problems arose during or after World War II.

generally the question of war claims against the Government and concluded that in respect of claims growing out of the War between the States it, rather than the Court of Claims, should assume the responsibility of determining the claims to be allowed and the extent to which the national treasury should be burdened with the payment thereof. Accordingly, it enacted legislation removing from the jurisdiction of the Court of Claims claims against the United States based on acts of the Army or Navy in the suppression of the rebellion, the terms of the first such Act specifically providing (13 Stat. at 381):

> ". . . That the jurisdiction of the Court of Claims shall not extend to or include any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the army or navy, or any part of the army or navy, engaged in the suppression of the rebellion, from the commencement to the close thereof."*

It is because of that statute and others complementing its application that the Court of Claims, subsequent to its decision in the *Grant* case, did not continue to grant compensation for denial takings *during the War between the States*. *Cf. Beasely* v. *United States*, 21 Ct. Cl. 225 (1886); *Myers* v. *United States*, 22 Ct. Cl. 80 (1887); *Nelson* v. *United States*, 22 Ct. Cl. 159 (1887); *Madison*

*Act of July 4, 1864, 13 Stat. 381 (1864-1865). For the legislative history of the Act (H. R. No. 305), see Cong. Globe, 38th Cong., 1st Sess. 1010, 2774, 2778, 2781, 3188, 3418, 3499, 3513, 3532, 3535, 3536, 3544, 3547 (1863-1864). See also Act of June 18, 1866, 14 Stat. 360 (1866-1867); Act of July 28, 1866, 14 Stat. 370 (1866-1867); Act of February 21, 1867, 14 Stat. 397 (1866-1867); Act of March 2, 1867, 14 Stat. 572 (1866-1867); Jt. Res. No. 5 of December 23, 1869, 16 Stat. 368 (1869-1871); Act of March 3, 1883 (the Bowman Act), 22 Stat. 485 (1881-1882); Act of March 3, 1887 (the Tucker Act), 24 Stat. 505 (1886-1887). No similar legislation was enacted in connection with any other war in which the United States has engaged.

Female Institute v. *United States,* 23 Ct. Cl. 188 (1888); *Conard* v. *United States,* 25 Ct. Cl. 433 (1890); *Brown* v. *United States,* 29 Ct. Cl. 394 (1894); *Presbyterian Church* v. *United States,* 33 Ct. Cl. 339 (1898).

Thus, in the *Myers* case, which apparently was concerned with non-enemy property destroyed to prevent it from falling into the hands of the enemy, the court said (22 Ct. Cl. at 81):

> "It was stated in the argument, though not alleged in the petition, that the boat was burned by the defendants to prevent it falling into the hands of the enemy, which fact, it is urged, would [not] deprive this court of jurisdiction under section 1059. If this position were well taken, the court would still be without jurisdiction under the Bowman Act, the third section of which provides that 'the jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the war for the suppression of the rebellion.
>
> "*However just this claim may be, the court has no power to consider it,* and the petition is therefore dismissed." [Emphasis supplied]

Although the jurisdiction of the Court of Claims was withdrawn in respect of war claims arising out of the War between the States, its general jurisdiction remained unchanged for purposes of deciding claims seeking compensation for property otherwise taken by the United States and destroyed to prevent its falling into enemy hands. Accordingly, when the question was again presented in *Wiggins* v. *United States,* 3 Ct. Cl. 412 (1867), the rationale of the *Grant* decision was emphatically reaffirmed.* Since

*Other cases in which the *Grant* decision has been cited with approval include *Meade* v. *United States,* 2 Ct. Cl. 224, 275 (1866);

no answer to a claim for a compensable taking. Petitioner's argument that respondents' properties would have been lost in any event is wholly speculative and unsupported by the record. Furthermore, the issue of liability is to be determined on the basis of what was done by the United States, not what might have happened if the United States had not taken the property.

Finally, petitioner's argument that its constitutional obligation to pay just compensation for private property taken for public use should be circumscribed by considerations of the amount of potential liability has no basis in law or morality. The greater the value of the property taken for the good of the nation, the more compelling is the requirement of the Fifth Amendment that the public generally bear the cost of acquisition.

ARGUMENT

THE COURT OF CLAIMS CORRECTLY HELD THAT THE UNITED STATES IS OBLIGATED UNDER THE FIFTH AMENDMENT TO PAY JUST COMPENSATION FOR PRIVATE PROPERTY WHICH IT TOOK AND USED FOR MILITARY PURPOSES IN WARTIME AND WHICH IT ULTIMATELY DESTROYED TO DENY ITS USE TO THE ENEMY.

Underlying much of petitioner's argument in these cases is its apparent failure to recognize that the claims here presented are claims under the Constitution of the United States —not mere appeals to the discretion of a sovereign government—and that the constitutional test of compensability is that private property be taken for a public use. Destruction of private property for public purposes is no less a

public use than is a use through which property is kept in service or consumed. *United States* v. *General Motors Corp.*, 323 U. S. 365 (1945).

Petitioner argues at length (*e.g.*, Br., pp. 12-14, 23-24, 37-38, 40, 51-53, 62-63) that a mere destruction of private property by a governmental agency does not necessarily constitute a "taking" of that property within the constitutional protection—a proposition which we do not here challenge. There are, of course, cases where the circumstances of destruction do not establish the deliberate intention to take which is characteristic of a contractual obligation but, rather, point to an incidental destruction of private property as a necessary by-product of a governmental act directed at some other objective. As this Court stated in *Omnia Commercial Company* v. *United States*, 261 U. S. 502, 508-09 (1923):

> ". . . But destruction of, or injury to, property is frequently accomplished without a 'taking' in the constitutional sense. . . . There are many laws and governmental operations which injuriously affect the value of or destroy property—for example, restrictions upon the height or character of buildings, destruction of diseased cattle, trees, etc., to prevent contagion—but for which no remedy is afforded. . . ."*

But such cases are wholly beside the point here. We are not presently concerned with the question whether the mere fact of destruction may properly give rise to an inference that the property was "taken". We are, instead, dealing with a situation in which private property has concededly

*See, *e.g.*, *Miller* v. *Schoene*, 276 U. S. 272 (1928); *North American Storage Co.* v. *Chicago*, 211 U. S. 306 (1908); *Lawton* v. *Steele*, 152 U. S. 133 (1894); *St. Regis Paper Co.* v. *United States*, 110 Ct. Cl. 271 (1948), *cert. denied*, 335 U. S. 815 (1948).

been taken, deliberately and intentionally,* but where the constitutional obligation to pay just compensation for it is sought to be avoided solely upon the ground that the public use for which the property was taken was use by destruction to deny it to the enemy rather than use by occupation. The Fifth Amendment does not contain any such exception to the obligation that it imposes, nor does any judicial decision support the contention that there is any such exception.

1. The decision below is in accord with long-settled principles of constitutional law established by judicial decisions under the Fifth Amendment.

The Court of Claims has found as facts (a) that prior to the outbreak of war the Army had formulated war plans looking toward seizure of the properties of the oil companies in the event of an emergency, (b) that after the outbreak of war—specifically, on December 12, 1941—in accordance with the instruction of those war plans, the Army took possession and operating control of the properties of the oil companies and (c) that from that date until December 27, 1941, when the properties were formally requisitioned by the Army, they remained under the exclusive control of the Army and were used by it for its own purposes.

Petitioner apparently does not dispute the accuracy of those facts—nor, indeed, can it do so in this Court. See, *e.g.*, *United States* v. *Russell*, 80 U. S. 623, 631 (1871);

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*"On December 27, 1941, the United States Army requisitioned all remaining petroleum stocks, and all storage and handling facilities at the Pandacan terminals of the oil companies. The requisition was in anticipation and for the purpose of destruction to prevent items of military value from falling into the hands of the enemy." (FF 30, R. 41-42)

United States v. *Omaha Tribe of Indians*, 253 U. S. 275, 281 (1920); *United States* v. *Penn Foundry & Manufacturing Co., Inc.*, 337 U. S. 198, 205 (1949). It does, however, contend that the taking of December 27, 1941, was not one for the consequences of which the Government is legally (even if morally) responsible.

Viewed realistically, what the Army did, during a time of extreme emergency, was to seize the properties of the oil companies for the exclusive use of the Army. To be sure, such seizure was effected with the complete cooperation of the oil companies—who made available to the Army not only the whole of their petroleum stocks and storage and distribution facilities but also their highly-trained personnel for operating purposes. As a practical matter, however, the seizure of such properties conformed in all respects with authorized Army procedure in taking, using and destroying respondents' motor vehicles, floating equipment and the like (for which in most instances full compensation has heretofore been paid by petitioner). Indeed, with the possible exception of the presence here of the element of patriotic cooperation, the situation in point of law was not different from the Government seizure of plaintiff's coal mines in *United States* v. *Petvee Coal Company*, 341 U. S. 114 (1951).

Although petitioner has failed even to mention this Court's opinion in that case, the fact remains that the Governmental acts there involved were held (without a dissent on the point) to constitute a taking of the plaintiff's property. Thus Mr. Justice Black, who announced the judgment of the Court, after first pointing out that "whether there is a 'taking' must be determined in light of the particular facts and circumstances involved", made the following statement in which Justices Frankfurter, Douglas and Jackson joined (341 U. S. at 117, 118-19):

> ". . . Whatever might have been Pewee's losses had it been left free to exercise its own business judgment, the crucial fact is that the Government chose to intervene by taking possession and operating control. By doing so, it became the proprietor and, in the absence of contrary arrangements, was entitled to the benefits and subject to the liabilities which that status involves."

Mr. Justice Burton, who wrote with the concurrence of the Chief Justice and Justices Clark and Minton, also recognized that there was a "taking" of the properties but decided against allowance of compensation for the stated reason that "There is no showing that anything of compensable value was taken by the Government from the company, or that the Government subjected the company to any pecuniary loss" (341 U. S. at 122). It is, of course, too obvious for argument that in the present cases the Government took from respondents "something of compensable value" and that the intentional acts of the Government "subjected [respondents] to a pecuniary loss".

This Court in the *General Motors* case* also gave consideration to the scope and meaning of the Fifth Amendment under circumstances pertinent to the present issue (323 U. S. at 378, 383-84):

> "In its primary meaning, the term 'taken' would seem to signify something more than destruction, for it might well be claimed that one does not take what he destroys. But the construction of the phrase has not been so narrow. The courts have held that the deprivation of the former owner rather than the accretion of a right or interest to the sovereign constitutes the taking. Governmental action short of

United States v. *General Motors Corp.*, 323 U. S. 373 (1945), involving a claim of compensation for property voluntarily surrendered to, and subsequently partially destroyed by, the Government.

acquisition of title or occupancy has been held, if its effects are so complete as to deprive the owner of all or most of his interest in the subject matter, to amount to a taking.

"For fixtures and permanent equipment destroyed or depreciated in value by the taking, the respondent is entitled to compensation. An owner's rights in these are no less property within the meaning of the Fifth Amendment than his rights in land and the structures thereon erected. And it matters not whether they were taken over by the Government or destroyed, since, as has been said, destruction is tantamount to taking [citing cases]. This is true whether the fixtures and equipment would be considered such as between vendor and vendee [citing cases], or as a tenant's trade fixtures [citing cases]. In respect of them, the tenant whose occupancy is taken is entitled to compensation for destruction, damage or depreciation in value [citing cases]. And since they are properly distinct from the right of occupancy such compensation should be awarded not as part of but in addition to the value of the occupancy as such."

The concurring opinion of Mr. Justice Douglas expressly approves the ruling of the Court that "respondent is entitled to compensation for fixtures and permanent equipment destroyed or depreciated in value by the taking" (323 U. S. at 384). See also *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 630-31 (1952); *United States* v. *United Mine Workers of America*, 330 U. S. 258, 284-85 (1947); *United States* v. *Causby*, 328 U. S. 256, 261-63 (1946); *International Paper Co.* v. *United States*, 282 U. S. 399, 406 (1931); *Portsmouth Harbor Land & Hotel Company* v. *United States*, 260 U. S. 327, 329-30 (1922); *Richards* v. *Washington Terminal Company*, 233 U. S. 546, 557-58

(1914); *United States* v. *Welch*, 217 U. S. 333, 338-39 (1910); *United States* v. *Lynah*, 188 U. S. 445, 464-65, 474 (1903); *United States* v. *Great Falls Mfg. Co.*, 112 U. S. 645, 657-58 (1884); *Salomon* v. *United States*, 86 U. S. 17, 19-20 (1873); *Pumpelly* v. *Green Bay Company*, 80 U. S. 166, 177-78 (1871).

Relying upon the foregoing authorities—particularly the decisions of this Court in *Pewee Coal* and *United Mine Workers*—we argued that in point of fact there had been a taking of respondents' properties on December 12, 1941, on and after which date the properties were used and exclusively controlled by the Army. Although the facts found by the Court of Claims establish that from and after December 12, 1941, respondents were wholly deprived of all control over their properties (FF 15, 16, 17, R. 36-37), the court expressed its belief that the control exercised by the Army between December 12 and December 27, 1941, did not amount to a taking of the terminal facilities (R. 47).*

If it were open to us to argue the facts in this Court, we would urge that the circumstances surrounding the Army's acts on December 12, 1941, constituted a taking of respondents' properties on that date, without more.

However that may be, the Court of Claims has expressly found as a fact that the terminal facilities of the oil companies were taken on December 27, 1941, when the properties were formally requisitioned (FF 30, R. 41-42) and thereafter used by the Army until December 31, 1941, on which date, while still in the exclusive possession and control

*The only case cited in support of that holding was its own decision in *Safeway Stores, Inc.* v. *United States*, 118 Ct. Cl. 73 (1950). But the *Safeway* opinion makes it perfectly plain that the properties there involved were returned intact to the owner and that the Government did not assume possession and operating control of the properties. The situation here is, of course, entirely different.

of the Army, they were destroyed by the Army to deny their use to the enemy (FF 23, 27, 30, R. 39, 41, 42).

The conclusion that the taking for public use found by the Court of Claims is compensable under the Fifth Amendment is not only in accord with, but is compelled by, the decisions holding that the mere act of denial destruction constitutes in and of itself a compensable taking of property within the protection of the Fifth Amendment. *Mitchell* v. *Harmony*, 54 U. S. 115 (1852); *United States* v. *Russell*, 80 U. S. 623 (1871); *Grant* v. *United States*, 1 Ct. Cl. 41 (1863); *Wiggins* v. *United States*, 3 Ct. Cl. 412 (1867).

The opinion of Chief Justice Taney in *Mitchell* v. *Harmony*, 54 U. S. 115 (1852), contains probably the earliest judicial pronouncement that just compensation must be paid for non-enemy property destroyed in non-enemy territory to deny its use to the enemy. In that case plaintiff sued Colonel Mitchell in trespass, for the allegedly unauthorized taking of his property during the Mexican War, and won a jury verdict of over $95,000. Mitchell appealed to the Supreme Court on the grounds (a) that seizure of the property was lawful in light of the then-existing immediate and impending danger and (b) that the jury had been incorrectly charged to the extent that it had found such danger not to exist. The Supreme Court, in affirming the judgment of the court below, took note of Colonel Mitchell's defense of justification based on preventing the property from falling into enemy hands (54 U. S. at 131) and went on to say (54 U. S. at 133-34):

> "*There are, without doubt, occasions in which private property may lawfully be taken possession of or destroyed to prevent it from falling into the hands of the public enemy*; and also where a military officer, charged with a particular duty, may impress private property into the public service or take it for public use. *Unquestionably, in such cases, the*

government is bound to make full compensation to the owner; but the officer is not a trespasser." [Emphasis supplied]*

Thus, the rule was early announced that a destruction of property to deny its use to the enemy is a taking thereof for public use and that the fact of destruction does not relieve the Government from the payment of just compensation under the Fifth Amendment. See also *United States* v. *Russell,* 80 U. S. 623, 627-29 (1871); *Dow* v. *Johnson,* 100 U. S. 158, 169 (1879); *United States* v. *Lynah,* 188 U. S. 445, 477 (1903); *Hirsh* v. *Block,* 267 Fed. 614, 621 (App. D. C. 1920); 10 Ops. Att'y Gen. 21, 25-27 (1861); 40 Ops. Att'y Gen. 250, 253 (1942).

In *John P. Baldwin* v. *United States,* Rep. No. 259 from the Court of Claims to the House of Representatives, 36th Cong., 2d Sess. (1860-61), the question of the compensability of a denial taking was considered for the first time by the Court of Claims. There an American-owned vessel which had been wrecked on a Florida beach was burned by officers of the United States to prevent certain quantities of lead and other contents of the vessel from falling into the hands of the Seminole Indians, with whom the country was then at war. With regard to the liability of the Government to compensate the owner for the loss of the vessel and her contents, the Court of Claims said, speaking through Judge Loring (pp. 15-16):

"It was argued that the United States had a right to destroy the property, because in its position

*The legislative history of the Act [10 Stat. 727 (1852-55)] passed to relieve Mitchell from losses sustained in obedience to a command of his superior officer shows clearly the recognition by Congress of an obligation in any event to compensate Harmony for the property taken. Cong. Globe, 32nd Cong., 1st Sess. 398, 493, 502, 543, 547, 651, 659-61, 695-96, 707 (1852).

'it was dangerous with reference to the war and the enemy.' The United States had the right to destroy it, but not because it was a nuisance, in its nature pernicious to everybody, and therefore abatable by anybody, but only for the public good, and then subject to the constitutional provision.

"It then was contended that the case shown was not one of taking private property for public use, but 'simply preventing private property being taken by the public enemy to be used against private citizens and against the government;' *but this was a public use, and the cost of it is to be borne by the public, who were benefited by it. We think the case is within the provision of the Constitution, on which the petitioner relies.*'

"It was then contended that this provision of the Constitution could not avail the petitioner because there was no act of Congress carrying the provision into effect; but none is necessary. The Constitution imposes on the United States the obligation of furnishing an indemnity for the property taken, and upon that obligation an implied contract arises, upon which, under the statute constituting this court, a claim against the United States may be maintained here.

"We are of opinion that the petitioner is entitled to recover. . . ." [Emphasis supplied]

Again in *Grant* v. *United States,* 1 Ct. Cl. 41 (1863), the Court of Claims considered at length the compensability of a denial taking. Grant had contracted with the Government to furnish certain quartermaster supplies for the forts and military posts in Arizona and had in his mills and storehouses valuable supplies belonging to the Government. In 1861 the people of Tucson were intensely hostile to the Government of the United States and openly talked of secession long before the War between the States was actually

commenced. Accordingly, when the commanding officer of the United States troops in the vicinity of Tucson received information that the fort he occupied was to be abandoned and destroyed, he ordered a subordinate officer to destroy such Government stores as could not be removed from the fort, together with such private property of Grant as might be of value to the public enemy or to the disloyal people of Tucson. That order was carried out and the property of Grant destroyed.

It seems clear that in the *Grant* case the military had not, as here, used the claimant's property prior to its destruction. In spite of that fact, however, the Court of Claims held that compensation was payable to Grant for the destruction of his properties to prevent them from falling into enemy hands, saying in that regard (1 Ct. Cl. at 44-45):

> "... It may safely be assumed as the settled and fundamental law of Christian and civilized States that governments are bound to make just indemnity to the citizen or subject whenever private property is taken for the public good, convenience, or safety.
>
> "The limitation imposed on the government of the United States in the exercise of its right of *eminent domain* by the fifth article of the amendments of the Constitution is a solemn recognition of this settled and fundamental law of States, and binds the government to the observance of the principles of justice and right in its dealings with the citizen with the force of organic law. In this article it is declared that 'private property shall not be taken for public use without just compensation.'

The court then considered, and rejected, the argument of the Government that the property for which compensation was claimed had been taken under the common-law principle of overruling necessity rather than in the exercise of the right of eminent domain and, after stating that the law of

overruling necessity was applicable only in an action against individuals, not in an action against the State, concluded as follows (1 Ct. Cl. at 46-47, 50):

> "Upon the authority of the cases cited, and others that might be adduced, as well as on the principles which distinguish a case of public necessity, utility, or good, from the overruling necessity which regulates the law of individuals, we are of opinion that the rightful taking of private property for use or destruction, when the public exigency demands it, by a military officer commanding any part of the public force, is an exercise of the right of *eminent dòmain*, and that such a case is not governed by the law applicable to individuals.
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> ". . . The exigencies of war forbid that the legislature should provide for the precise circumstances under which the eminent right of the State may be called into action. The fundamental law provides that private property shall not be taken for public use without just compensation. Is this provision of the Constitution answered when compensation is made for property taken under legislative authority, and denied when taken by military officers acting rightfully under the proper functions of their office? We think not. The obligation to make compensation is co-extensive with the right of the State to take private property for public use; and whenever it is taken by competent authority, the obligation of the State cannot be evaded.
>
> ". . .
>
> "Private property must not only be taken upon urgent necessity, but for public use, in order to fix the liability of the government to make compensation. Was the destruction of this property a taking of it for public use? It is almost of equal public importance that military supplies be kept from the use of the enemy, as that they minister to the support of our own armies. Writers on public law do not dis-

the facts of the *Wiggins* case are important to an understanding of its decision, they will be given at some length.

In 1854, San Juan del Norte, or Greytown, in the State of Nicaragua, became the rendezvous of marauders and freeboooters whose activities materially interfered with passage across Central America to the Pacific, which passage was a matter of great importance to the Government and people of the United States. After one of the accredited foreign ministers of the United States to a South American republic, on his way to or from his post, had been treated with great indignity and violence and citizens of the United States otherwise injured in their property, the President of the United States, through the Secretary of the Navy, ordered Commander Hollins to proceed to Greytown to seek and enforce reparations for the insult to the United States and for the injuries inflicted upon its citizens. This Commander Hollins did, and when his demands for indemnity and suitable apologies were treated with indifference or contempt, he promptly destroyed the city.

It was then suggested to Commander Hollins that the inhabitants of Greytown might take revenge for the punishment he had inflicted upon them and that in that regard a large quantity of powder owned by plaintiff and located across the bay from Greytown in the neutral territory of Punta Arenas might be used to destroy American-owned property. Accordingly, Commander Hollins seized the powder and cast it into the bay, to prevent its being used by the enemy. For this destruction plaintiff claimed compensation from the Government of the United States, and

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3 Ct. Cl. XLVI (1867); *Perrin* v. *United States*, 4 Ct. Cl. 543, 547 (1868) (pointing up the distinction between a denial taking and battle damage); *Pugh* v. *United States*, 5 Ct. Cl. 113, 117 (1869); *Booth & Company* v. *United States*, 62 Ct. Cl. 288, 295 (1926); *Royal Holland Lloyd* v. *United States*, 73 Ct. Cl. 722, 733 (1931); *Miller* v. *Horton*, 26 N. E. 100, 102 (Mass. 1891—opinion by Judge, later Mr. Justice, Holmes).

in upholding his claim, the Court of Claims said (3 Ct. Cl. at 422):

> "We do not see how this case can be distinguished in principle from that of *Grant* v. *The United States*, I. C. Cls., p. 41. There the property of a citizen, in one of the Territories of the United States, was destroyed to prevent it from falling into the hands of the insurrectionary forces. Judge Wilmot reviews at length the grounds of the claim, and the authorities bearing upon the subject, and shows most clearly and conclusively that, whether the property be taken and appropriated by right of eminent domain, or destroyed to prevent other or greater injury to the public, the party is entitled to compensation. That this results as well from the principles of natural justice and equity as from the constitutional injunction to make compensation for private possessions devoted to public ends. We are entirely satisfied with the grounds there assumed, so far as they are applicable to the facts of this case, and can add nothing to the cogency or conclusiveness of the reasoning. Nor is it necessary to support it by further citations of authorities."

Petitioner refers (Br., p. 28) to *Walker* v. *United States*, 34 Ct. Cl. 345 (1899), and *Presbyterian Church* v. *United States*, 33 Ct. Cl. 339 (1898), as expressing disapproval, by way of dictum, of the earlier *Grant* and *Wiggins* decisions. But both of those cases were decided at a time when the Court of Claims was deprived of jurisdiction to consider denial claims arising out of the War between the States, a fact which is of obvious importance in correctly appraising the statement that a taking under such circumstances is one for which the Court of Claims could not grant compensation. Indeed, the *Walker* case itself, holding that the taking of a schooner and its subsequent destruction was compensable in the Court of Claims within the jurisdictional

limitation of the Bowman Act*, held that a taking is compensable notwithstanding that the ultimate use to which the property was put involved its destruction. Thus the court pointed out (34 Ct. Cl. at 346-47):

> ". . . In cases of implied contract, it was established by the decision of the Supreme Court in *Salomon's Case* (19 Wall., p. 17) that where private property was delivered to an officer for public use a contract will be implied though the property was not used, and the Government received no benefit from it. As a general principle, it may be said that where private property is taken for public use under conditions which will authorize a court to hold it a case of implied contract, the title passes to the Government, *eo instanti*, and it is no concern of the owner as to what use or purpose the Government puts it or whether the property perishes in its hands."

Petitioner relies most heavily upon what the court below correctly termed a *dictum* of this Court in *United States* v. *Pacific Railroad*, 120 U. S. 227 (1887).

The background of the *Pacific Railroad* controversy may be summarized as follows. Between August 14, 1867, and July 22, 1872, the Pacific Railroad Company rendered to the Government of the United States certain services involving the transportation of passengers and freight. When called upon to pay the charges for such services, the Government did not contest the extent and value thereof

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*Act of March 3, 1883, 22 Stat. 485 (1881-1882). Although the original legislation withdrawing from the jurisdiction of the Court of Claims claims for property losses sustained by reason of military action in the War between the States excluded all claims growing out of either destruction or appropriation of property, the Bowman Act continued the jurisdictional exclusion only as to claims growing out of destruction or damage to property, thereby permitting claims for other property losses. Accordingly, cases such as the *Walker* case, arising under the Bowman Act and subsequent amendatory legislation, quite properly recognized a distinction, for purposes of that jurisdictional legislation, between property taken for destruction and property taken for a "use" other than destruction. That distinction, however, has no relevance to the obligation imposed on the United States by the Fifth Amendment.

but rather sought to offset the cost to it of four bridges which it had built over the Company's lines some eight years earlier, during the War between the States, to replace other bridges which had been destroyed, two by Confederate forces and two by Union forces, in the conduct of that war. The Company had not made any claim for the destruction of its bridges, so that the only question before the Court for decision was whether the Company was chargeable for the bridges constructed on its property by the United States for purposes of facilitating military operations.

The Court held that private parties cannot be charged for works constructed on their lands by the Government to further the operations of its armies and, therefore, that the Company was entitled to the full amount of its claim for services rendered (120 U. S. at 239-40). However, in the course of his opinion Mr. Justice Field considered the question whether the Government had incurred any obligation in respect of the two bridges destroyed by Union forces. In that connection he discussed the compensability of war damage generally, stating that the "destruction or injury of private property in battle, or in the bombardment of cities and towns, and in many other ways in the war, had to be borne by the sufferers alone as one of its consequences." (120 U. S. at 234). He further stated, with respect to the practice of the Government to make compensation for property taken for the service of its armies, such as vessels, steamboats and the like, or buildings and supplies, that (120 U. S. at 239):

> ". . . Its obligation to do so is supposed to rest upon the general principle of justice that compensation should be made where private property is taken for public use, although the seizure and appropriation

of private property under such circumstances by the military authorities may not be within the terms of the constitutional clause. *Mitchell* v. *Harmony*, 13 How. 115, 134; *United States* v. *Russell*, 13 Wall. 623."

Although the decision itself reaches the same result as if the destruction of the bridges had been thought to constitute a compensable taking, the observations of Mr. Justice Field on the subject of compensability of wartime property seizures are not readily reconcilable, on their face, with any other judicial decision or dictum on that subject.

It may be that the factual circumstances of the destruction of the bridges in that case were regarded by Mr. Justice Field as pointing more to incidental war damage rather than to a deliberate and intentional "taking". To the extent, however, that his conclusion was based upon the proposition that no wartime seizures are compensable as a matter of constitutional right, it is clearly in conflict with the authorities cited in support of that position (*Mitchell* v. *Harmony* and *United States* v. *Russell*) and is in conflict with all other decisions of this Court dealing with emergency seizures of private property (*e.g.*, *United States* v. *General Motors Corp.*, *supra* at pp. 16-17; *United States* v. *Pewee Coal Company*, *supra* at pp. 15-16). Indeed, even the petitioner here does not contend for any such proposition, but concedes that at least a wartime seizure which does not contemplate destruction of the seized property is compensable. It has, in fact, paid respondents for the stocks of petroleum products at the Pandacan terminals, including the stocks remaining at the time of the demolition on December 31, 1941.

It is, of course, possible that Mr. Justice Field's observations were directed solely at seizures of property during the

War between the States, as to which the Congress had withdrawn jurisdiction from the Court of Claims and thereby left the owners of seized property with no remedy other than an appeal to the sense of "justice" of the Congress.

However that may be, neither the observations of Mr. Justice Field nor the authorities cited by him* lend any support to petitioner's contention in these cases that a taking of private property which would be compensable if it contemplated continued use of the property in service, is non-compensable if it contemplated ultimate destruction of the property. On the contrary, Mr. Justice Field cited with evident approval the views of Vattel, which he paraphrased as follows (120 U. S. at 234):

> ". . . those [damages] done by the state deliberately and by way of precaution, as when a field, a house, or a garden, belonging to a private person, is taken for the purpose of erecting on the spot a town rampart or other piece of fortification; *or when his standing corn or his storehouses are destroyed to prevent their being of use to the enemy . . . are to be made good to the individual, who should bear only his quota of the loss. . . .*" [Emphasis supplied]

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*E. g., *Respublica* v. *Sparhawk*, 1 Dall. 357 (Pa. 1788) (involving property destroyed *by the enemy*); *Parham* v. *The Justices*, 9 Geo. 341 (1850) (involving injunctive relief); *Taylor* v. *Nashville & Chattanooga R. R.*, 6 Coldwell 646 (Tenn. 1868) (involving the *legality* of destruction), none of which cases have any bearing at all on the compensability under the Fifth Amendment of a denial taking. Mr. Justice Field also referred to certain Congressional claims which were concerned with damage sustained to property in the hands of the enemy or with battle damage, *e. g.*, when a levee was cut to prevent British troops from bringing up their cannon during the War of 1812. For a discussion of such claims, as also cited by petitioner (Br., pp. 40-51), see *infra* at pp. 36-41.

Mr. Justice Field also cited *Mayor* v. *Lord*, 18 Wend. 126 (N. Y. 1837). But that case, which held that an *individual* is not liable for property destroyed to meet an emergency, expressly recognized the liability of the *State* for such losses (18 Wend. at 130). Indeed, the decision of the New York Supreme Court in that case (which was affirmed by the Court of Errors) stated specifically (17 Wend. at 291):

> "... But the obvious answer is, that in all cases of the kind, the individual concerned in the taking or destroying of the property is not personally liable. If the public necessity in fact exists, the act is lawful. Thus, houses may be pulled down, or bulwarks raised for the preservation and defense of the country, without subjecting the persons concerned to an action, the same as pulling down houses in time of fire; *and yet these are common cases where the sufferers would be entitled to compensation from the national government within the constitutional principle. Const. U. S., Art. 5 of the Amendments.*" [Emphasis supplied]

The opinion of this Court in *Juragua Iron Company* v. *United States*, 212 U. S. 297 (1909), upon which petitioner places considerable emphasis, is likewise not authority for the contention that respondents are not here entitled to just compensation. That action was brought by an American corporation to recover the value of property in Cuba which had been destroyed by American forces for sanitary reasons during the war with Spain. The decision of this Court was clearly based on the proposition that property located in enemy territory, no matter by whom owned, is enemy property, for the destruction of which the Government is not liable under the Fifth Amendment. The following brief

quotation from the opinion of this Court should remove any doubt as to the basis of decision (212 U. S. at 305-06, 308):

> ". . . We say 'enemy's country' because, under the recognized rules governing the conduct of a war between two nations, Cuba, being a part of Spain, was enemy's country, and all persons, whatever their nationality, who resided there were, pending such war, to be deemed enemies of the United States and of all its people. The plaintiff, although an American corporation, doing business in Cuba, was, during the war with Spain, to be deemed an enemy to the United States with respect of its property found and then used in that country, and such property could be regarded as enemy's property, liable to be seized and confiscated by the United States in the progress of the war then being prosecuted; indeed, subject under the laws of war to be destroyed whenever, in the conduct of military operations, its destruction was necessary for the safety of our troops or to weaken the power of the enemy.
>
> ". . .
>
> "In view of these principles—if there were no other reason—the plaintiff corporation could not invoke the protection of the Constitution in respect of its property used in business in Cuba, during the war, any more than a Spaniard residing there could have done, under like circumstances, in reference to his property then in that island."

In view of that unequivocal statement, it is difficult to see how petitioner can properly cite the case as authority for its contention that compensation is not payable for a denial destruction of *non-enemy* property located in *non-enemy* territory being used for *loyal* purposes. To say that "there is no basis for hinging the right to compensation upon

the location of the property in enemy or friendly territory" (Br., p. 37) is to claim that the enemy is entitled to the same rights under our Constitution as the people of the United States. We do not believe that petitioner would seriously urge such a proposition.

The *Pacific Railroad* and *Juragua* cases are the only judicial authorities cited by petitioner against the correctness of the decision below—and, as we have shown above, those cases simply do not support its position.

Apparently realizing the necessary effect of its inability to refer the Court even to one case directly upholding its contention, petitioner has cited (Br., pp. 21-25) a number of cases decided under, or involving an interpretation of, various legislative enactments of *general* applicability imposing emergency measures of regulation or control. See, *e.g.*, *St. Regis Paper Company* v. *United States*, 110 Ct. Cl. 271 (1948), *cert. denied*, 335 U. S. 815 (1948) (legislation allocating and controlling the use of war materials); *Bowles* v. *Willingham*, 321 U. S. 503 (1944) (price-control legislation); *Falbo* v. *United States*, 320 U. S. 549 (1943) (Selective Service Act); *Lichter* v. *United States*, 334 U. S. 742 (1948) (excess profits legislation); *Lawton* v. *Steele*, 152 U. S. 133 (1894) (legislative exercise of state police power).*

*Other of the cases cited by petitioner, *e.g.*, *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146 (1919), and *Ruppert* v. *Caffey*, 251 U. S. 264 (1920), are cases in which the Supreme Court referred to the *Pacific Railroad* decision under factual situations far removed from the one now before the Court. Additionally, since it is, and long has been, well established that the exercise of war powers is subject to the just compensation provisions of Fifth Amendment, *Ex parte Milligan*, 71 U. S. 2, 120-21 (1866); *Dow* v. *Johnson*, 100 U. S. 158, 169 (1879); Whiting on War Powers (43d ed. 1871) 24, we find ourselves unable to understand petitioner's reference to *Hirabayashi* v. *United States*, 320 U. S. 81 (1943), and *Korematsu* v. *United States*, 323 U. S. 214 (1944).

But such cases have nothing to do with the obligation imposed upon the Government by reason of its deliberate and intentional acquisition of specific private property; they involve merely individual losses incidentally sustained as a result of legislation of general application, which is predicated upon the very principle for which we here contend, *i.e.*, that sacrifices of property in time of emergency for the public good should be borne by the public generally. Statutes designed to effect such a proportionate distribution of loss are completely consistent with the principle embodied in the Fifth Amendment.

2. The decision below is in accord with non-judicial interpretation of the obligation imposed upon the United States by the Fifth Amendment.

Prior to the Act of March 3, 1863, 12 Stat. 765 (1860-1863), which empowered the Court of Claims to enter an enforceable judgment against the Government, Congress was the only forum in which a claimant might obtain relief for property taken by the Government. Many of the claims presented to that body involved a denial taking by American military forces of non-enemy property located in American territory, and we will note but a few of the private acts under which the obligation to compensate under such circumstances was recognized and discharged.

Jacob Shinnick and others owned certain rope-walks in Baltimore during the War of 1812. The property was destroyed by the Army in order to prevent its falling into enemy hands. On February 27, 1815, Congress passed an Act to compensate Shinnick and his associates for the losses they had sustained. 6 Stat. 150 (1790-1845).

William H. Washington was the owner of a house in which the Army had placed miltary provisions. Later, in order to prevent those provisions from falling into enemy hands, the house and all that was in it was destroyed. On March 1, 1815, Congress passed an Act to compensate Washington for his losses. 6 Stat. 151 (1790-1845). The similarity between the destruction of Washington's house to deny to the British the provisions located therein and the destruction of respondents' terminal facilities to deny to the Japanese the stocks of petroleum products there stored (and for which respondents have been fully paid) is obvious.

For other acts providing without reservation full compensation for denial takings, see 6 Stat. 152, 153, 155, 186, 188, 194, 195 (1790-1845).

Josiah O. Armes was the owner of a house in Fairfax County, Virginia, during the War between the States.* Armes was loyal to the Union cause, and Fairfax County was in a part of Virginia not declared in rebellion. The house was destroyed to prevent its falling into Confederate hands. On January 31, 1867, Congress passed an Act to compensate Armes for the property so taken and destroyed. 14 Stat. 617 (1866-1867).

William B. Campbell was the owner of a steamboat located at Caledonia, Illinois, during the War between the States. Campbell was loyal to the Union cause, and Illinois was a State not declared in rebellion. The steamboat was seized to prevent its falling into Confederate hands and was subsequently lost in consequence of that seizure. On June

*It will be remembered that after July 4, 1864, the Court of Claims was without jurisdiction to consider claims arising out of the War between the States, Congress being the only forum to which such a claimant could turn for relief (see *supra* at pp. 24-26).

23, 1870, Congress passed a Joint Resolution conferring upon the Court of Claims jurisdiction to hear and determine Campbell's claim for compensation. 16 Stat. 66 (1869-1871). The Court of Claims ultimately compensated Campbell for his losses. *Campbell* v. *United States*, 8 Ct. Cl. 240 (1872).

A number of buildings which were a part of the University of Kentucky, located at Lexington, Kentucky, in a section of that State not declared to be in rebellion, were taken by military authority and used as a general hospital for Union soldiers. By accident several of the buildings were destroyed. On January 17, 1871, Congress passed an Act, approved by President Grant, to compensate the University for the property so taken and destroyed. 16 Stat. 76 (1869-1871). We might observe here that if a destruction by accident is compensable, *a fortiori* a destruction by design is compensable. See also Act of March 3, 1879, 20 Stat. 134 (1877-1879); Act of March 1, 1881, 21 Stat. 89 (1879-1881); Act of May 1, 1882, 22 Stat. 13 (1881-1882); Act of July 5, 1884, 23 Stat. 28 (1883-1885).

Petitioner concedes (Br., p. 40) that after the War of 1812 and the War between the States the Congress recognized its obligation under the Fifth Amendment to compensate for property destroyed to deny its use to the enemy. It points out, however, that at least the Lawrence Report (see *infra* at p. 54) indicates that some members of the Congress were opposed to making such payments. It also refers to certain claims (Br., p. 40) which, it asserts, were denied because they alleged a denial taking, *e.g.*, American State Papers, Class IX, Claims, Nos. 243, 536 and 587.

The first such claim, while involving property destroyed to deny its use to the enemy, was rejected on the narrow ground that the claimant (a trader) had voluntarily (and for purposes of speculation) brought his property into the area of immediate danger. It was on that ground alone that compensation was denied. The other two claims involved property incidentally destroyed during the War of 1812 when a levee was cut to prevent British troops from bringing up their cannon. Compensation was also denied by the Congress, but the reason therefor is fully consistent with established principles of international law. There the act of destruction was not deliberate or intentional but, rather, completely incidental to the objective sought to be gained. Such losses were properly considered as damage incident to battle, for which compensation has never been given even under the Fifth Amendment. See *Omnia* v. *United States,* 261 U. S. 502, 510 (1923); *Perrin* v. *United States,* 4 Ct. Cl. 543 (1868), *aff'd,* 12 Wall. 315 (U. S. 1870).

Petitioner also argues (Br., p. 41) that the Congress did not provide generally for the payment of claims involving a denial taking, yet it points out (Br., p. 42 n. 12) that the claim of William H. Washington, 6 Stat. 151, which clearly involved a denial taking (*supra* at p. 37) was a case "which came within the policy adopted in Section 9 of the Act of April 9, 1816" (an Act providing compensation for property taken by public authority and destroyed, lost or consumed by the Army during the War of 1812). Thus petitioner urges at once that there was no general enactment covering denial takings and that a congressional enactment "providing generally for the payment of other categories of war losses" (Br., p. 41) specifically

embraced a claim for a destruction of property to deny its use to the enemy.*

In a further attempt to support its contention that the Congress, in years immediately following the War between the States, did not recognize the constitutional obligation to compensate for property taken to deny its use to the enemy, petitioner refers to a number of bills presented for the relief of certain loyal citizens** whose property had been so taken and destroyed. What petitioner fails to recognize, however, is that each of those bills was *passed* by the Congress, only to be vetoed by President Grant on the basis of his own thoughts as to compensability of such claims under the Fifth Amendment. The views of Congress were most adequately expressed by Senator Edmunds, who spoke vigorously *against* the passage of the bill introduced for the relief of J. Milton Best (his opposition being based upon the understanding that the particular facts of the claim presented a question of battle damage rather than denial taking). Thus, during the course of the debate on the bill, he argued as follows (Cong. Globe, 41st Cong., 3d Sess. at 312-13):

> "Now, I undertake to say that not one of the instances referred to by my honorable friend yesterday, of the acts passed after the War of 1812, have the remotest application to a case of this character.

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*Petitioner also refers to the Act of March 3, 1817, providing compensation for houses destroyed by the enemy and points out that such legislation was enacted "as a law originating in its benignity, and aimed gratuitously for the benefit of any suffering portions of the community" (Br., p. 42 n. 12). We do not, of course, contend that compensation for property destroyed *by the enemy* is given other than as a matter of grace.

**J. Milton Best, East Tennessee University, Manchester Salt Works (Br., pp. 43-50).

> They all of them stand upon the principle I have described, that where private property has been taken and occupied by our troops as military storehouses, as places of deposit for public material, as military workshops, as barracks, and in consequence of that occupation the fire of the enemy has been drawn upon them, or *we have been obliged to destroy them in order to prevent their falling into the hands of the enemy, then, upon the principles of public law that have existed for five hundred years, we have made compensation;* but when as an incident of and as an act of war the property of a citizen is destroyed in consequence of a battle going on, whether by the guns of the one side or the other, he has no claim at all . . ." [Emphasis supplied]

It is obvious from a reading of the Grant veto either that he shared the view of Senator Edmunds as to the facts of the case, *i.e.*, incidental damage rather than a denial taking, or that he was swayed by considerations which have no application at all in determining the constitutional question presented.*

As to the taking of property in connection with World War II, the view of the Congress concerning the obligation

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*Apparently President Grant himself entertained great doubt as to the correctness of his veto of bills granting compensation for denial takings. Thus in his message accompanying rejection of the Manchester Salt Works measure, he expressly stated (Sen. Ex. Doc. No. 42, 42d Cong., 3d Sess. at p. 2):

> "I am greatly apprehensive that the allowance of this claim could and would be construed into the recognition of a principle binding the United States to pay for *all property* which their military forces destroyed in the late war for the Union. . . ."

His apprehension was, of course, unfounded in constitutional obligation, although it obviously was an important, if not the underlying, reason behind his several vetoes.

of the United States under the Fifth Amendment to pay just compensation for private property taken for military purposes is expressed in the Act of October 16, 1941 (the Requisition of Military Materials Act, 50 U. S. C. App. §§ 721-24), which provides:

> "Whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1946, determines that (1) the use of any military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions is needed for the defense of the United States; (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation for such property to be determined as hereinafter provided, and to dispose of such property in such manner as he may determine is necessary for the defense of the United States. The President shall determine the amount of the fair and just compensation to be paid for any property requisitioned and taken over pursuant to this Act and the fair value of any property returned under section 2 of this Act, but each such determination shall be made as of the time it is requisitioned or returned, as the case may be, in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States . . . "

3. The principles of constitutional law applied by the court below are consistent with established principles of international law.

Although petitioner discusses at some length (Br., pp. 54-60) the writings of various international law authorities and the decisions of mixed claims commissions, it again fails to recognize that the statements to which it points are in no way related to, or limited by, a principle for the protection of the individual such as is established in the Fifth Amendment to our Constitution. See, *e.g.*, Wolff, *The Science and Method of War;* Borchard, *Diplomatic Protection of Citizens Abroad**; Wormser, *Collection of International War Damage Claims.* Moreover, Wolff merely affirms the lawfulness of a taking to deny useful war material to the enemy. He nowhere suggests that the consequences of such a taking are to be borne alone by the person whose property is taken. And Wormser says only that "for injuries which are *merely incidental* to proper military acts, there is no relief" (p. 157). We do not, of course, argue to the contrary. On the other hand, the statements

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*We still do not understand petitioner's reliance upon the Borchard work. That author states, after referring with approval to the *Mitchell, Russell, Grant* and *Wiggins* cases (pp. 262-64):

> "A long line of decisions has established the principle that the appropriation of private property for military purposes involves the responsibility of the state. That such a use justifies the taking is unanimously admitted. . . . It is the seizure of private property for the public use and its loss and destruction while so employed that warrants an indemnity to the owner."

Nor can we agree with petitioner's statement (Br., p. 33 n. 20) that the Taylor work [*International Public Law* (1901)] is contrary to our position. When the author states (p. 556) that "private property may be appropriated for public use, or, what is the same thing, destroyed to prevent its falling into the enemy's hands for his use", we believe there is a clear recognition of the obligation to compensate.

found in Whiting, *War Powers under the Constitution* (43d ed. 1871), and II Halleck, *International Law* (4th ed. 1908), were written against the background of our own Constitution. Thus, Hon. William Whiting, Solicitor of the War Department during the period of the War between the States, wrote as follows (pp. 17-18):

> "Public use does not require that the property taken shall be actually *used*. It may be *disused, removed,* or *destroyed*. And destruction of private property may be the best public use it can be put to.
>
> "Suppose a bridge, owned by a private corporation, to be so located as to endanger our forts upon the banks of a river. To demolish that bridge for military purposes, would be to appropriate it to public use. To raze private buildings in a city, for the purpose of preventing a general conflagration, would be to apply them to public use. To destroy arms, or other munitions of war, belonging to private persons, in order to prevent their falling into possession of the enemy, would be to devote them to public use. . . ."

And General Halleck (then Commander-in-Chief of the Armies of the United States) stated (pp. 70-71):

> ". . . Distinction . . . should always be made in regard to the character of the people in the district of country which is militarily occupied or passed over. The people of the country in which you are likely to operate may be divided into three classes:
>
> "First. The truly loyal, who neither aid nor assist the rebels, except under compulsion, but who favor or assist the Union forces. Where it can possibly be avoided, this class of persons should not be subjected to military requisitions, but should receive the protection of our Armies. It may, however, sometimes be necessary to take

> their property, either for our own use or to prevent its falling into the hands of the enemy. They will be paid at the time the value of such property; or, if that be impractical, they will hereafter be fully indemnified. Receipts should be given for all property so taken without being paid for. . . ."*

Decisions of mixed claims commissions (Pet. Br., pp. 57-60) are likewise not determinative of the constitutional obligation to compensate for a denial taking. It is, however, not without importance that such decisions have upheld claims for losses of that nature. See, *e.g., MacDonald (Gt. Br.)* v. *United States,* Mixed Commission of British-American Claims, May 8, 1871, U. S. For. Rel. 1873, Vol. III 54-55 (involving the destruction of non-enemy property located within the Union lines); *Barrington (U. S.)* v. *Mexico,* Commission under the Convention of July 4, 1868, V Moore's Internat. Arb. at 3674; *Labrot (Fr.)* v. *United States,* Commission under the Convention of January 15, 1880, *id.* at 3706; *cf.* the arguments for the United States in *Jardel (Fr.)* v. *United States, id.* at 3700.

In a final attempt to controvert the proposition that in this country the compensability of a denial taking has been consistently recognized, petitioner refers (Br., pp. 60-62) to the action of our State Department taken in 1926 on behalf of the Standard Oil Company of New Jersey in its claim against the British Government for the destruction of its Roumanian oil properties by British military forces to deny their use to the Germans. The British Secretary of State for Foreign Affairs had consistently denied liability

*We have noted petitioner's references (Br., pp. 55-56 n. 23) to other parts of the Halleck work and have found nothing therein at all applicable to the instant controversy.

on the part of his Government, on the ground that the destruction was a "war loss" for the compensability of which not any legal right existed.* That contention was considered at length and rejected by the then Solicitor of the State Department, Dr. Charles Cheney Hyde, U. S. For. Rel., 1926, Vol. II at 316-22; 1924 Opinions of the Solicitor of the Department of State at 438-44; and as a result of his advices a communication prepared by Secretary of State Kellogg was dispatched to the British Foreign Office by the United States Ambassador to the Court of St. James, expressing in vigorous language the position of the Government of the United States on the compensability of a denial taking. Thus, Secretary Kellogg wrote (U. S. For. Rel., 1926, Vol. II at 327-28):

> "In disclaiming liability to indemnify the Standard Oil Company for losses sustained under the circumstances of this case Your Excellency states:
>
> > "'The principle that "war losses" do not give rise to a legal right to compensation is not limited to war losses in the sense of loss or damage inflicted by the enemy, but covers also loss and damage which the commander in the field is himself obliged to inflict upon the owners of property in the area under his authority.'

*Petitioner's statement (Br., p. 60)—that the "significant" point of the treatment of the Standard Oil Company Roumanian loss is the assertion of the British Government that there was no right to compensation—is somewhat difficult to understand in view of the fact that the present claims arise under the Constitution of the United States. Furthermore, whether the Appendix attached to petitioner's brief accurately reflects the present position of the British Government is questionable, inasmuch as a substantial award in favor of Standard-Vacuum for an installation in Singapore, destroyed by the British Navy in 1942 to prevent its falling into the hands of the Japanese, has been made by the British authorities as recently as 1951.

"...

"The Government of the United States does not assert that a belligerent is liable to indemnify property owners for property which may be destroyed by its acts of war as that term is used to indicate acts for which no liability attaches. My Government has not admitted, as Your Excellency seems to think it has done, that the destruction of the property of Romano-Americana was an act of war as so understood. It is the view of the Government of the United States, which it is prepared to sustain with respectable authorities, some of which His Majesty's Government have had occasion to employ in support of claims of its nationals, that under some circumstances a belligerent is obligated to indemnify owners of property which it takes or destroys. The occasions on which private property may be taken and destroyed with or without compensation are authoritatively defined with clarity. *The taking of property by a belligerent to prevent its falling into the hands of an enemy comes within the category of cases in which a belligerent is obligated to indemnify the owner.*" [Emphasis supplied]

Secretary Kellogg then referred to many of the numerous authorities directly supporting the view of his Government that a denial taking is compensable and concluded as follows (pp. 332-35):

"It will be perceived from the foregoing discussion that according to the most eminent authorities on international law, by decisions of courts of the United States which His Majesty's Government has seen fit to endorse and employ in supporting claims of its nationals, and by at least one decision of the Commission established pursuant to the Treaty of May 8, 1871, between the United States and Her Majesty's

Government, *the liability of a government to indemnify owners of property destroyed to prevent its falling into the hands of the enemy is established.* There seems to be no occasion to doubt that the claim of the Standard Oil Company falls within the declarations in decisions cited.

"*My Government feels that the facts of the present case are so clear and the applicable principles of law so elementary that there is occasion only for discussion of the amount of indemnity to be paid.** My Government hopes that Your Excellency's Government will see its way to authorize a representative to meet a representative of the Government of the United States for the purpose of discussing the amount of indemnity to be paid. Should Your Excellency's Government be unwilling to participate in such a discussion, my Government feels that it is under the necessity of insisting that the question of the liability of His Majesty's Government in the premises and, if liable, the question of the amount of indemnity to be paid be submitted to arbitration pursuant to the Agreement of April 4, 1908 between the Government of the United States and His Majesty's Government, which was extended by the Agreement between the two Governments concluded June 3 [23], 1923.

"I am instructed to add in conclusion that it would be a source of keen regret to my Government were his Majesty's Government to decline to adjust this claim or to submit the question of liability and the

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*This view was reaffirmed by the Department of State in a letter dated May 22, 1929, from the United States to the League of Nations Preparatory Committee of the Conference for the Codification of International Law. See *Bases of Discussion*, Vol. III, Supp. (League of Nations Pub. 1929, V. 10) 20, 22; V. Hackworth, *Digest of International Law* (1943) at 705-06.

amount of damages to arbitration." [Emphasis supplied]

4. Petitioner's arguments addressed to the expediency of compliance with its constitutional obligation do not afford any basis for challenging the correctness of the decision below.

As the court below recognized (R. 47), the fundamental issue in these cases is to be determined solely with reference to the "just compensation" provisions of the Fifth Amendment to the Constitution of the United States. Either there was a taking of respondents' properties for public use within the meaning of that Amendment, or there was not such a taking. No other issue is presented.

The court below has held that factually the cases fall within the scope of the constitutional provision. That conclusion, if upheld, makes the Government liable under the Constitution for the payment of just compensation, and arguments addressed to the "wisdom" and "inadvisability" of imposing such liability are wholly irrelevant (Br., pp. 12, 63). Once it has been determined that the constitutional guarantee of compensation is applicable, *i.e.*, that there has in fact been a "taking", the question of liability becomes fixed. Petitioner has, however, failed fully to recognize the distinction between a claim under the Constitution and one to which constitutional limitations are inapplicable and has fashioned a number of arguments which invite consideration of principles having no place at all in a proper determination of the *constitutional* question here presented. For that reason we propose to deal individually with those arguments as a means of bringing into focus with finality the precise nature of the instant controversy.

(a) *A denial taking, unlike battle damage, involves a deliberate and intentional act calculated to benefit the public generally at the expense only of the person whose property is taken.*

As an opening wedge in its attack on the judgment below, petitioner argues (Br., p. 12) that it is "neither practical nor equitable to attach to [a denial taking] a rigid right to full compensation which concededly does not exist with respect to battle damage." In other words, it argues that a denial taking, being identifiable with battle damage because both involve loss of property, must be non-compensable because battle damage is non-compensable. The difficulty with that argument is, simply, that it loses sight of the very obvious difference between battle damage and denial damage—a difference that is fundamental in this case.

Property located in the general area of military operations may, as an incident of those operations, be damaged or destroyed by our own forces (perhaps by artillery fire or air attack). Damage of that character, because of its incidental nature, has been generally referred to as battle damage. Clearly there is no implied contract under the Fifth Amendment to compensate for the losses so sustained, and the Government has never recognized a liability in tort for any such incidental damage. On the other hand, military operations sometimes require that specific property, because of its potential use to the enemy, be destroyed as a means of furthering the cause of our own forces. Destruction under those circumstances is necessarily the result of an intentional and deliberate act—an act of selection from which a contract to compensate can readily be implied. The prop-

erty has been put to a public use and, for that reason, falls squarely within the constitutional provision requiring the payment of just compensation. Damage of that sort is as different from battle damage as the principle of eminent domain is different from the law of overruling necessity. The one is limited by the Constitution; the other is limited only by the nature of the emergency to be met.

In the instant cases we are dealing with just such a deliberate and intentional act of taking. And what petitioner characterizes as a "rigid right to full compensation" (Br., p. 12) is no more than what the Fifth Amendment guarantees. The Government chose to exercise its power of eminent domain by selecting respondents' properties for public use. Having done so, its obligation to give just compensation is clear.

(b) *Liability under the Fifth Amendment is to be determined in the light of what the Government actually did—not what it might have done.*

Petitioner also suggests boldly (Br., p. 14) that the instruction of the Fifth Amendment can be disregarded when its application would bring about an "unrealistic" result. Thus it states that the Army might have destroyed respondents' properties if in enemy hands without liability under the Constitution, from which it reasons that the Army with equal freedom from liability could have destroyed the properties before enemy occupation. Here again petitioner loses sight of the constitutional provision. Although the power of eminent domain is an attribute to sovereignty, it is expressly limited by the Fifth Amendment. To say that the Government possesses the power to take and destroy

specific property and then to deny compensation because of what might have happened had it not so acted is blindly to disregard what the framers of our Constitution viewed as a necessary restraint upon sovereign use of private property.

We do not, of course, deny that the Army could have allowed respondents' properties to fall into the hands of the enemy and then destroyed them (possibly at great expense and loss of life*). The fact is, however, as the record so clearly shows, that representatives of the Government entrusted with the decision chose deliberately to destroy the properties. The question of what might have happened is not, therefore, before this Court.

We have earlier dealt with the decisions of this Court and of the court below upholding the compensability under the Fifth Amendment of the losses sustained by these respondents (see *supra* at pp. 15-29). We will add here, however, that an argument similar to the one now made by petitioner was advanced in *Grant* v. *United States*, 1 Ct. Cl. 41 (1863), which provoked the court to say (p. 50):

> ". . . that the same loss would have befallen him [the claimant] in another way is an illiberal, and, we think, illegal response to the claim for compensation."

Obviously, in arguing that respondents are not entitled to compensation because of what might have happened, petitioner is indulging in hindsight to escape its clear obligation under the Fifth Amendment.

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*Compare the statement (Pet. Br., pp. 14-15 n. 5a) that during World War II the total cost of depriving the Axis powers of the use of the Ploesti facilities included the loss of 350 heavy bombers.

(c) *That the property might have been destroyed by the enemy is no answer to a claim for just compensation for property actually taken for public use.*

Petitioner does not deny that respondents' oil terminals were singled out for destruction because of their potential use to the enemy. Moreover, for all stocks of petroleum products stored in the terminals at the time of demolition petitioner has paid respondents in full. Petitioner argues (Br., pp. 13-14), however, that because the enemy might have destroyed the properties, they were without value either to our armed forces or to respondents and that, for that reason, compensation should not be payable under the Fifth Amendment. The fallacies in that argument are threefold.

First, the record in these cases is barren of testimony even indirectly supporting petitioner's contention that the properties, for the loss of which claim is here made, would have been destroyed by the enemy. Quite to the contrary, the Japanese were obviously interested not only in the supplies of petroleum products which might remain in the terminals upon their occupation of Manila, but also in the installations as a means of storing petroleum obtained from the producing fields of the East Indies. There is no reason at all to believe that they would have destroyed the terminal facilities. In any event what the Japanese might have done is sheer speculation and completely without meaning beside the fact that the Army chose deliberately to destroy the terminals. *Cf. United States* v. *Causby*, 328 U. S. 256, 268 (1946).

Secondly, the value of the properties at the time of demolition is a question not now before this Court for decision,

that question having been specifically reserved for future proceedings in the Court of Claims (R. 61).

Thirdly, and most importantly, when private property is taken for a public use, the Constitution requires the payment of just compensation. Perhaps the value of the property would have been "hopelessly speculative" (Br., p. 16) had it been left to the use of the enemy. But that question is not reached when the Army deliberately chose to put the properties to its own use—by destroying them to insure that they could not be used by the enemy. Moreover, to argue that the properties were not put to a "beneficial use" (Br., p. 14) is to disregard the realities of the situation. If the destruction were of no use to the Army, necessarily it would not have been accomplished. It follows, therefore, that the property was taken and used, and that the clear and unequivocal constitutional provision for just compensation must be applied.*

(d) *The just compensation provisions of the Fifth Amendment are not circumscribed by considerations of potential liability; if property is taken, compensation is payable.*

Petitioner concedes (Br., p. 18) that only a relatively small amount of non-enemy property was destroyed in non-

*Throughout its brief (*e.g.*, pp. 16, 17, 40), petitioner has presented arguments identical with those set forth at considerable length in the so-called Lawrence report. That report was prepared by a member of the Senate War Claims Committee at a time when Congress had undertaken the responsibility of determining which of the claims arising out of the War between the States were to be paid. The legislative history of that report does not indicate that it ever received the approval of the Senate. Indeed, as petitioner must agree, the views of the Senate at that time were diametrically opposed to the views set forth in the report. See, *e.g.*, the bills for the relief of Best, East Tennessee University, Manchester Salt Works, etc., all of which were passed not only by the Senate but by the House.

enemy territory during World War II to deny its use to the enemy. Indeed, we know of no other claim which has been brought to recover for losses of such a nature. Yet petitioner argues (Br., pp. 17-18) that the obligation of the Fifth Amendment should not attach here simply because at some future time the Government may be faced with "impossible financial burdens" stemming from extensive takings of a denial nature. But again there is a short answer to the argument.

When private property is taken for a public use, the right to compensation clearly follows from the Fifth Amendment. And where, as here, specific property has been deemed so essential to the war effort that it has been taken and used for the good of the nation, it is as much a violation of the Constitution to require the owner of that property to bear the loss alone as it is to direct a tax at the property of but a single person. The burden of the common defense is not to be disproportionately distributed, and a system of uniform taxation has been authorized to ensure that end. In the same way the Fifth Amendment ensures compensation for a taking of private property for a public use. The *obligation* to pay under such circumstances is absolute, and nowhere is it limited by considerations of *ability* to pay. The greater the value of the property taken for the good of the nation, the more compelling is the requirement of the Fifth Amendment that the public generally bear the cost of acquisition.

(c) *The Fifth Amendment is not limited by speculation as to the over-all reconstruction needs of modern warfare.*

While purporting "to regret the losses incurred by the respondents through no fault of their own" (Br., p. 18),

petitioner presents the two-fold argument (a) that problems of reconstruction, as resolved in the Philippine Rehabilitation Act [60 Stat. 138 (1946)], can negative an expressed constitutional provision and (b) that the Philippine Rehabilitation Act itself contemplates the compensability of a denial taking only as a matter of grace. Those contentions can be disposed of briefly.

Whatever might be the reconstruction problems following upon hostile military operations on American soil, those problems necessarily remain within the province of the legislative branch of the Government. We are not aware of any restraint at all upon the freedom of action possessed by that body to deal in its discretion with questions of compensation to be allowed for battle damage.* On the other hand, where there has been a taking of private property for public use, the Congress, just as the judiciary, is bound by constitutional limitation and is, accordingly, obliged to give just compensation whenever guaranteed by the Fifth Amendment. If, in the light of the possible economic effects of a World War III fought within the territorial limits of this country, that guaranty is no longer tolerable, any change therein must come in the form of a new constitutional amendment, not through the emasculation of the present one by strained judicial interpretation.

Petitioner's argument based on the Philippine Rehabilitation Act breaks down as follows:

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*The British Parliament during the last war resolved its reconstruction problems before they became acute through the simple medium of compulsory war damage insurance (see, *e. g.*, War Damage Act, 1943, 6 & 7 Geo. 6, c. 21, 26 Halsbury's Statutes of England 468 *et seq.*, consolidating earlier war-damage enactments). That statute covered damage which, in this country, would be compensable under the Fifth Amendment; but the underlying principle—that of equal distribution of the loss—is the same. *Cf.* Pet. Br. Appendix A (pp. 64-65).

(a) the Act broadly provides for compensation for war losses, without regard to whether or not the circumstances of loss fall within any recognized principle of legal liability;

(b) certain of the losses covered in the Act might not otherwise have been legally compensable, *e.g.*, losses incurred by reason of enemy attack, looting, pillage, etc., compensation being allowed "as a matter of grace";

(c) therefore, since a denial taking is compensable under the Act, it is compensable "as a matter of grace".

The reasoning employed by petitioner simply does not follow. Moreover, while the respondents Standard-Vacuum and Caltex* might have obtained under the Act partial compensation in local currency for their war losses in the Philippines, the Act was never intended to limit in any way the legal liability of the United States for claims compensable without regard to its specific provisions or to require acceptance by a claimant of its limited benefits in lieu of the complete relief to which such a claimant would otherwise be entitled.

We believe that the foregoing discussion adequately points up petitioner's misconception of the fundamental issue in these cases. The Court is not here concerned with what might have been the consequences of Army action short of an actual taking and use of respondents' properties. The fact is that the properties were taken and used by

*The respondent Shell Philippines, a British corporation, would not qualify for benefits under the Act. See 50 U. S. C. App. § 1752 (1948). In the light of the above discussion, we fail to see how such "underscores the fact that compensation was not provided in discharge of any constitutional obligation" (Pet. Br., p. 52 n. 19).

the Army, for which the Government is bound under the Fifth Amendment to the payment of just compensation.

CONCLUSION

The judgment below, holding that respondents are entitled under the Fifth Amendment to recover for the taking of their terminal facilities at Pandacan, is right and should be affirmed.

Respectfully submitted,

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October 13, 1952.

PETITION FOR REHEARING

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 16

THE UNITED STATES,
Petitioner,

v.

CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED and STANDARD-VACUUM OIL COMPANY,
Respondents.

PETITION FOR REHEARING

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December 23, 1952.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

THE UNITED STATES, *Petitioner,* v. CALTEX (PHILIPPINES), INC., THE SHELL COMPANY OF PHILIPPINE ISLANDS LIMITED and STANDARD-VACUUM OIL COMPANY, *Respondents.*	No. 16

PETITION FOR REHEARING

Now come the above-named respondents and present this, their petition for a rehearing of the above-entitled cause, and in support thereof respectfully state the following as grounds therefor.

In its decision of December 8, 1952, a majority of this Court decided that a wartime destruction of private property to prevent its falling into the hands of the enemy does not, in and of itself, constitute a compensable taking of private property within the meaning of the Fifth Amendment. In so deciding, this Court rejected the principle announced in *Mitchell* v. *Harmony*, 13 How. 115 (U. S. 1852), and *United States* v. *Russell*, 13 Wall. 623 (U. S. 1871); and rested its decision upon one of two conflicting *dicta* in *United States* v. *Pacific Railroad Co.*, 120 U. S. 227 (1887).*

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* In the *Pacific Railroad* case, Mr. Justice Field also recognized, in his paraphrase of Vattel's Law of Nations, the principle that

> ". . . those [damages] done by the state deliberately and by way of precaution, as when a field, a house or a garden, belong-

We assume that the Court gave full consideration to the arguments in favor of adhering to the previously-established rule, and we shall not, therefore, urge reargument of the principle, as an abstract proposition, announced by the Court in the instant case.* In applying that principle to the facts of the present case, however, it is submitted that the Court has overlooked controlling findings of the Court of Claims which require an affirmance of the judgment of that Court.

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ing to a private person, is taken for the purpose of erecting on the spot a town rampart or other piece of fortification; or when his standing corn or his storehouses are destroyed to prevent their being of use to the enemy; and stating that such damages are to be made good to the individual, who should bear only his quota of the loss . . ." [120 U. S. at 234].

*The Court may, however, wish to correct its opinion in at least two respects:

(1) It is respectfully submitted that the Court erred in stating that "what was said in the *Pacific Railroad* case was later made the basis for the holding in *Juragua Iron Co.* v. *United States*, 212 U. S. 297 (1909)". The Court's attention is invited to the language appearing in 212 U. S. at 305-06, 308 (quoted in respondents' brief at p. 34), from which it is clear that the *Juragua* decision rests upon the fundamental proposition that property destroyed in enemy territory is considered enemy property, for the destruction of which the Government is not liable under the Fifth Amendment.

(2) It is also submitted that the Court erred in stating that "the common law had long recognized that in times of imminent peril—such as when fire threatened a whole community—the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved". The *dicta* in the cases cited for that proposition [*Bowditch* v. *Boston*, 101 U. S. 16, 18-19 (1879); *Respublica* v. *Sparhawk*, 1 Dall. 383 (Pa. 1788); *Parham* v. *The Justices*, 9 Ga. 341, 348-49 (1850)] considered only the common law principle that an *individual* was not liable for property destroyed for the public good under circumstances of overruling necessity. Such cases did not purport to limit in any respect the obligation of the State to pay just compensation for property which it has taken and used and itself destroyed in the exercise of its power of eminent domain.

I

The decision of this Court fails to give proper effect to the findings of the Court of Claims that on December 12, 1941, the United States Army took exclusive control of respondents' properties and that it used them continuously thereafter through December 26, 1941.

The Court of Claims, after having first found (FF 1-2, 4-5, R. 30-31) that years before the outbreak of war the Army had formulated written war plans looking toward seizure of respondents' properties in the event of an emergency, then went on specifically to find (FF 29, R. 41) that

> "On December 12, 1941, [after the outbreak of war] the United States Army took control of the operation of supply and distribution of petroleum products from the stocks on hand of the oil companies at their Pandacan terminals to the troops in the field. In the exercise of this control the Army used the land, buildings, fixed installations, equipment, containers, rolling stock, and personnel of the oil companies' Pandacan terminals. Such use was continued through December 26, 1941. . . ."

It is submitted that this Court has wholly misconceived the significance of that finding in stating, in its opinion, "While the military exercised considerable control over the business operations of respondents' terminals during the period between December 12 and December 26, there was not, according to the findings below, an assumption of actual physical or proprietary dominion over them during this period." The Court of Claims did not find that the Army

"exercised considerable control over the business operations of respondents' terminals" during that period. It found that the Army "took control of the operation" and that the Army —not the respondents—"used the land, buildings, fixed installations, equipment, containers, rolling stock and personnel . . . through December 26, 1941." It is true that the court below did not find that there had been a taking of *ownership* of respondents' facilities prior to December 27. It did find, however, that there had been a taking of the "use" of such facilities, which was clearly a compensable taking if respondents had asserted the claim for compensation for that use. The situation thus created was precisely the same as if the United States had requisitioned the use of privately-owned motor cars, expecting to return them at a later date.

Where property subsequently destroyed has been continuously used and exclusively controlled by the Government, an implied agreement under the Fifth Amendment to pay for that use and for the destruction effected during the course thereof may properly be found. So much was expressly decided in the *Pewee Coal* and *General Motors* cases,* and it is the existence here of such prior use and control, coupled with the fact of formal requisition, that makes inapplicable the *dictum* in *Pacific Railroad* principally relied on by the Court in reversing the judgment below.

United States v. *Pewee Coal Company*, 341 U. S. 114 (1951); *United States* v. *General Motors Corp.*, 323 U. S. 373 (1945).

II

The finding below of a requisition on December 27, 1941, binding in this Court, requires affirmance of the judgment under review.

The Court of Claims found (FF 30, R. 41-42) that

> "On December 27, 1941, the United States Army requisitioned all remaining petroleum stocks, and all storage and handling facilities at the Pandacan terminals of the oil companies. The requisition was in anticipation and for the purpose of destruction to prevent items of military value from falling into the hands of the enemy."

Although the requisition there found is nowhere so qualified by the Court of Claims, this Court has characterized it as "no more than an order to evacuate the premises which were slated for demolition."

The above-quoted finding of the Court of Claims is founded upon a formal letter of requisition (II R. 293) which is unambiguous in its terms. It states:

> "Effective immediately all petroleum stocks, storage and handling facilities, etc., at your Manila, Pandacan oil depots are requisitioned by the U. S. Army . . ."

It is difficult to conceive of a more formal and manifestly intentional taking of respondents' properties. Indeed, in the case of Caltex, in addition to the formal letter of requisition, a written receipt was given for all terminal facilities and stocks requisitioned. It is one thing to hold that mere incidental destruction of property to prevent its

falling into enemy hands is non-compensable and quite a different thing to hold that one whose property has been formally requisitioned and later destroyed to prevent it from falling into enemy hands is not entitled to compensation.

Compensation has been denied to respondents herein, notwithstanding the fact that their properties were concededly requisitioned for a public purpose, apparently because the public use to which the Government put their property was to destroy it. If this be a valid ground for removing the protection of the Fifth Amendment, the same conclusion would logically have to be reached in cases where the Government in the exercise of its right of eminent domain takes property of a citizen and destroys it to build a highway. But it is clear that such a taking for purposes of destruction is compensable [*United States* v. *Causby*, 328 U. S. 256 (1946)]. We respectfully submit that there is no reason why the constitutional protection should be clearly applicable in the one situation and yet refused application in the other.

CONCLUSION

For the foregoing reasons, and on the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that, upon rehearing, the judgment of the Court of Claims be affirmed.

Respectfully submitted,

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December 23, 1952.

CERTIFICATE OF COUNSEL

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

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.....

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